CORRECTED

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INTERNATIONAL CENTRE FOR SETTLEMENT OF

INVESTMENT DISPUTES

ICSID Case No ARB/19/28

between

LATAM HYDRO LLC and CH MAMACOCHA SRL

Claimants

- and -

REPUBLIC OF PERU

Respondent

The Tribunal

Professor Albert Jan van den Berg, President

Professor Dr Guido Santiago Tawil - Arbitrator

Professor Raúl E Vinuesa - Arbitrator

VIDEOHEARING ON JURISDICTION AND MERITS

Tuesday, 15 March 2022

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I N D E X

(9.00 EST, Tuesday, 15 March 2022)

PRESIDENT: I open Day 7 of the hearing. Is there any point that you would like to raise -- I stand corrected. Day 8, if I do my math correctly. Today is a day about maths, so ...

Any point of procedure, admin or household, Mr Zeballos?

MR ZEBALLOS: No, Mr President, not from Claimants.

PRESIDENT: Mr Grané?

MR GRANÉ: Nothing for Respondent, sir, thank you.

PRESIDENT: Mr Zeballos, can you please introduce your experts.

MR SANTIAGO DELLEPIANE and MR ANDREA CARDANI

MR ZEBALLOS: Yes. We have Mr Santiago Dellepiane and Mr Andrea Cardani, and they are ready to offer their direct testimony on damages in this matter.

PRESIDENT: First we will go with Mr Dellepiane.

Mr Dellepiane, can you please state your full name for the record?

MR DELLEPIANE: Santiago Dellepiane.

PRESIDENT: Mr Dellepiane, you appear as an expert witness for the Claimants. If any question is unclear to you, either because of language or any other reason, please do seek a clarification, because if you don't do so the Tribunal assumes you have understood the question and that your answer corresponds to the question.

MR DELLEPIANE: That is understood.

PRESIDENT: Mr Dellepiane, you will appreciate that testifying, be it before a court or an arbitral tribunal, is a very serious matter. In that connection the Tribunal expects you to give the declaration, the text of which will now appear on the screen.

MR DELLEPIANE: I solemnly declare upon my honour and conscience that my statement will be in accordance with my sincere belief.

PRESIDENT: Thank you.

Then I go to Mr Cardani. Mr Cardani, could you please state your full name for the record?

MR CARDANI: Yes, good morning. My name is Andrea Cardani of the Berkeley Research Group.

PRESIDENT: Mr Cardani, you also appear as an expert witness for the Claimants. Also for you it is applicable that if any question is unclear to

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you, either because of language or any other reason, please do seek a clarification, because if you don't do so the Tribunal assumes you have understood the question and that your answer responds to the question.

MR CARDANI: Understood.

PRESIDENT: Could you please also give the declaration, because testifying before a court or an arbitral tribunal is a very serious matter, and the Tribunal expects you to give this declaration.

MR DELLEPIANE: Sure. I solemnly declare upon my honour and conscience that my statement will be in accordance with my sincere belief.

PRESIDENT: Then to the two of you, since we are in a virtual hearing, could you confirm you are alone in the room with the two of you together then, and there's nobody else in the room? Mr Dellepiane?

MR DELLEPIANE: That's correct, Mr President. We are alone in a room here in Washington at the law firm. There is no one else with us.

PRESIDENT: Mr Cardani?

MR CARDANI: I confirm that we are alone in the room.

PRESIDENT: Then if at any time someone enters into the room, please let us know, and then stop giving testimony. **09:04**

MR DELLEPIANE: Of course.

PRESIDENT: May I invite you to scan the room, if possible?

MR CARDANI: Yes, I'm going to go ahead and do it. Bear with me for a second.

PRESIDENT: Gentlemen, can you please switch off your iPhone or any mobile device you have?

MR DELLEPIANE: They've been turned off already, sir.

PRESIDENT: Thank you. Can you please go to the first joint report of 14 September 2020, and, Mr Dellepiane, could you please go to page 74.

MR DELLEPIANE: Yes.

PRESIDENT: And confirm for the record that the signature appearing above your name is your signature?

MR DELLEPIANE: That is correct.

PRESIDENT: Mr Cardani, can I ask you to do the same for your signature?

MR CARDANI: Yes, that is my signature.

PRESIDENT: Then to the report of

20 July 2021, the reply report. Can you please go to page 84? Mr Dellepiane, can you confirm that the signature appearing above your name is your signature, please? **09:05**

MR DELLEPIANE: That is correct.

PRESIDENT: Mr Cardani, can you please confirm that is your signature?

MR CARDANI: That is correct.

PRESIDENT: Thank you. Gentlemen, is there any correction, modification or amendment you wish to make to either report?

MR DELLEPIANE: Mr President, there is one item of language of how we labelled one table in our report. Table 1 in our Second Report has a labelling issue which we discovered in preparation for today. I plan to explain this, but I can tell you right now.

PRESIDENT: Is that the table on page 24?

MR DELLEPIANE: That's correct, yes.

PRESIDENT: Go ahead.

MR DELLEPIANE: So the table -- the first item in the table where it says "but for value of the Mamacocha Project", it should say -- technically it should say "damages in relation to the Mamacocha Project" and then parenthetical "but for plus actual costs".

Our colleagues picked up on this in their First Report, and we failed to correct our Second Report accordingly -- our colleagues for Respondent, I mean, picked up on this, and they actually provided the correct illustration, but we failed to pick up and correct this in our Second Report. So it should say "damages on the Mamacocha Project parenthesis but for value plus actual costs".

PRESIDENT: OK. Anything else that needs to be changed?

MR DELLEPIANE: That's all. Thank you.

PRESIDENT: Thank you, gentlemen.

Then, Mr Zeballos, are you still there?

MR GRANÉ: Mr President?

PRESIDENT: Mr Grané?

MR GRANÉ: Yes. We have an issue to raise. I didn't want to interrupt the preliminaries, but we are mindful that the PO6, paragraph 23 contained rules as to the testimony of the damages experts, and this was included at Claimants' request. And that section indicates that the damages experts should be logging into the virtual platform separately and refrain from interacting with the other testifying witness.

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Now, of course we see that Claimants' damages experts are together. Now, Mr President, we've always insisted that we should be pragmatic. We are fine with proceeding in the way that they have set this up, but of course we would expect that the same pragmatism would be applied in the case of Peru's damages experts.

MR ZEBALLOS: Mr Grané, we are in absolute agreement on that, so that's not an issue for us. We are happy for you to proceed in the same manner as we've set this up.

PRESIDENT: Thank you. I appreciate that both parties are practical in this respect. Mr Grané, you also raised a very good question indirectly, which is how many microphones do they have? Can you help me, Mr Dellepiane? Do you have a separate microphone or do you share a microphone with Mr Cardani?

MR DELLEPIANE: No, we share a camera and we share a microphone.

PRESIDENT: All right. Gentlemen, when you are conducting the cross -- Mr Grané, are you conducting the cross?

MR GRANÉ: No, Mr President. My colleague, Ms Amy Endicott, will.

PRESIDENT: So she has to identify who she will address the question to -- good morning, Ms Endicott. **09:09**

MS ENDICOTT: Understood, Mr President.

PRESIDENT: When we get to the cross, there is still 45 minutes to go, can you clearly identify who you would like to ask the question?

PROFESSOR TAWIL: Sorry, Albert Jan, excuse me. I'm probably wrong but we're not applying the principle that the question is made to the leader and the leader decides who answers?

PRESIDENT: I'm a little bit afraid -- that's true, but I'm a little bit afraid that it becomes then a joint song and I would like to avoid overlap. If we can, in the spirit of being practical, maybe you can address it first to the leader, but I wonder who is the leader? Mr Dellepiane, you are supposed to be the leader?

MR DELLEPIANE: Well, I guess I will be acting in that capacity, and we have divided up the topics in a manner that we will not plan to address any question twice or anything of that sort, and I will pass on to my colleague the questions that he has been assigned to -- or the topics, generally speaking. We'll pursue lines of questioning and not be ping ponging between each other. **09:10**

PRESIDENT: Ms Endicott, let's see how it goes. If there's a difficulty for you in the cross-examination and handling logistics let me know, and then we will make further rules.

MS ENDICOTT: Thank you, Mr President.

MR GRANÉ: One point of clarification on this topic, then. The rule stated in paragraph 23 is that only one expert can respond to each question. That rule remains, correct?

PRESIDENT: It remains, yes. Exactly. I would like to streamline the questioning in practice that you know to whom you should address it, and it may be that that one comes and says well, it's not me who can answer this question but the other who can answer this question. But let's see how it goes, because we will already see I assume during the direct and the presentation who is dealing with which subject matter. Yes?

MR GRANÉ: Thank you.

PRESIDENT: Shall we go? Mr Zeballos?

MR ZEBALLOS: Yes, Mr President.

PRESIDENT: Direct is for you now.

Examination by Claimants

MR DELLEPIANE: We are now sharing our presentation. Let me just organise our screen so we can see the presentation, as well as you gentlemen. One second, please. OK. Can I confirm that you can see the presentation in full screen mode? **09:11**

PRESIDENT: Yes, OK.

MR DELLEPIANE: OK. Excellent.

Thank you, Mr President, members of the Tribunal. Good morning.

PRESIDENT: Before you start, Mr Cardani, since we're dealing with numbers today, I was correct provisionally that it's Day 7, not Day 8 for the transcript. Sorry for interrupting, but I want to have this clear out of the way immediately.

OK. Then, Mr Dellepiane, you may start now.

Presentation
by Mr Dellepiane

MR DELLEPIANE: Thank you very much, sir.

OK. Our presentation contains three core sections. I will be covering the first one, my colleague will cover sections 2 and 3, and there are a few remaining slides that present supporting materials in case there are specific questions on the back-up to what we have put together for today.

Turning to the affirmative assessment of

09:13
the fair market value, I would like to first remind you that we pursued two approaches to determining damages in this case, one based on the fair market value standard, which includes four categories of damages, four items, which are depicted in a graphical timeline format in this slide, and I will come back to this in much more detail.

Separately, we have presented an investment value calculation, that is a reliance approach to damages based on the investments made updated or capitalised at a risk adjusted rate. My colleague will be addressing that.

Turning to the fair market value calculation, sir, we have assessed damages as of the date of our Second Report, which is the latest figures presented on the record by us, of $45.62 million. This is comprised of $25 million, as you can see on the screen, of fair market value but for Respondent's actions, net of the actual value of zero. Additionally, $6.68 million of costs that were incurred after the date of valuation but which are already deducted in the fair market value calculation. In other words, the fair market valuation, as it does through a discounted cash flow model, takes revenues and subtracts certain costs, and some of those costs were spent anyway so they're not just theoretical, so they need to be added back here to avoid a double-dipping on the damages, so to speak. That complete 25 plus 6.68 is the complete amount of damages pursuant to the table that I just corrected earlier, table 1 from our Second Report that is. **09:14**

A third category is the pre-award interest, which serves to take all those damages which are expressed as of the date of valuation of March 14, 2017 to the date of our Second Report. And, finally, there are $2.68 million in additional expenses that were incurred by Claimants to wind down. These are mostly legal and operational expenses to wind down their business and associated with the litigation.

So -- pardon me, I'm looking on my pages here and on the screen.

In this case we have detailed information on what is effectively a preconstruction stage project, but we have very detailed information that allows for a reliable calculation via discounted cash flow analysis, something our colleagues from Versant agree with. This includes in order to estimate revenues the RER Contract itself, which

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presents us with the volumes -- the majority of the volumes to be sold and the prices at which those volumes would be sold, as well as an hydrology study by the firm Pöyry and an independent study by BA Energy Solutions that presented and forecasted electricity prices via a sophisticated dispatch modelling exercise.

For the costs we have a number of third-party studies, and I'm not going to read through all of them, but including the GCZ proposals and other feasibility studies, as well as for the interest we're using a DEG term sheet, that is the financial institution that was working with Claimants to finance the construction of the project.

Finally, with all this information we can calculate free cash flows to equity net of debt payments to the lenders, and that needs to be all discounted to present value at a date of valuation of 2017 using a discount rate, the cost of equity in this case, because these are free cash flows to equity, and to consider the risks that were not otherwise accounted for in those cash flow items that I described. For that we use the standard approach, standard improvement capital asset pricing model, and public sources of market data.

Regarding volumes and prices, we know from the RER Contract that in the first 20 years about 96 per cent -- more than 96 per cent -- of the energy will be sold pursuant to this RER Contract. We also know that the price at which all that energy would be sold. For the remainder of the energy not sold via the RER Contract we use the spot price projected by BA Energy Solutions in their dispatch model exercise. For the following 20 years after the expiration of the RER Contract, we use the BA Energy Solutions forecast for energy prices in Peru, and now we have to switch from the spot price to the monomic price, which includes the spot price plus capacity charge. This is all standard and once again unchallenged by Respondent's experts.

To fund the construction of this project you see on the screen that there were studies that allow us to know exactly how much -- with a great degree of certainty how much this project would cost, that is the capital expenditure or capex, and we also know what it would cost to operate the project in terms of opex, or operating expenses.

Now, to fund this we need to understand, because it's a very substantial amount of money, how

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a company actually undertakes such a choppy, such an irregular pattern where you have not a project that actually has steady cash flows of investments and costs year by year by year, but one that has a very particular pattern, as you can see on the screen, in which in the first three years you have a huge amount of expenditures, and then it's time to recover.

So I'm going to take a slight detour here and explain to you something you perhaps already know, but just for the sake of clarity in this case it's important to understand how these projects get funded, and that is through a great amount of debt or leverage. For that, let me use an example.

If an equity investor considers a $100 investment that has a $6 pay-off, and let's assume for a moment that he uses no leverage, the $100 investment is all equity. In one period example this would mean it has a 6 per cent return, $6 over the hundred dollars contributed, right? And let's assume that investor's hurdle rate or minimum rate of return is 8 per cent.

Well, in that case that investor would not invest because 6 per cent is lower than 8 per cent. It's very simple, right? Now, if it actually use debt or leverage, let's assume on an 80/20 basis and has now put $20 in equity, $80 in debt, what it will find is that the same project return needs to go to both lenders and equity holders, and the lenders would receive, assuming a 5 per cent interest rate in this example, purely for illustration purposes would receive 5 per cent of the $80 they put, or $4, and the equity investor would receive only $2 and you might say well, it's even worse now, you only received $2, but obviously that's not so because he received $2 on the basis of having contributed only $20 this time. He still can pursue the project, still able to pursue this going forward via leverage, via the bank financing it, but he receives a 10 per cent return, so he would invest in this example. **09:20**

Now, this is important. This is why people buy real estate on a leverage basis, not just because they can't always afford to put it all down but also because, if the real estate appreciates, you keep the difference. You keep the appreciated value. But you run a huge risk, don't you, which is that if it depreciates then you still owe the bank a huge amount of money in a mortgage or in a loan, right?

However, in this case the lenders are protected by the PPA, and that's fundamental to these types of projects and project finance, understanding that lenders look for the assurance of a power purchase agreement such as the RER Contract in order to use that as a sort of collateral against which they're loaning their money.

With this preliminary you can see on slide 10 here on the screen what the pattern of withdrawals, borrowings, and then repayments is. You see the first three years of borrowing cumulatively, and then returning and repaying the loan up to 2023 when the loan would be fully repaid. This is the pattern of financing that we follow in our model.

We use the interest rates presented by DEG, 7.36 during construction, 7.06 after construction. These compare very highly to the market cost of debt for a project of this sort in Peru at 4.28 per cent. We didn't use the 4.28 per cent because this was, in fact, a preconstruction project and these were the rates that were quoted by DEG, so we use the 7.36 and the 7.06, which obviously are a huge cost to the project, which is deducted in our discounted cash flow model.

This has one other effect, which is in the cost of equity calculation, and obviously if you have any questions on this we're happy to answer them.

The cost of equity calculation also moves in tandem with the leverage. This doesn't happen in all projects but with one that has such a huge amount of borrowing in the beginning and so little at the end, the risk to the equity holder is not the same year by year. It's different. Because the equity holder is first concerned with repaying the loan and there are not that many amounts and cash flows that are available to distribute to equity holders.

Therefore, when the loans are high, the loan balances are high, the risk to the equity holder is higher. When the loans are repaid the risk to the equity holder is lower. That's what you see here.

So there's a moving curve of cost of equity. Once again, you'll see from my colleague's explanation in a moment our colleagues from Versant agree with this pattern but disagree with the inputs to our calculation.

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So, to summarise, in a big picture basis, the risks that are typically considered in a project at a preconstruction status -- cost overruns, delays in construction, financing -- these are accounted for in capex contingencies, timeline contingencies and the types of rates -- the level of rates that we've assumed in the model.

Volumes and prices are protected by the RER Contract. Operating costs are also protected by inflation clauses, inflation protection clauses in the RER Contract. And finally country risk, an important category of risk that investors are always concerned about, is accounted for somewhat protected by the RER Contract but is accounted for in the discount rate with a full amount of country risk premium that we have applied for Peru with no downward adjustment despite the fact that there is fiscal stability agreement clauses.

So this gives us the $25 million fair market value calculation. It is the present value of future expected cash flows of the project at the date of valuation looking forward, discounted to March 2017.

And in this case we have a very unique situation, which is that one month prior to the date of valuation we have a contemporaneous offer for an investor, a sophisticated investor who had been conducting due diligence to participate in this project. And what this investor said was that they would recognise 7.63 million of the investments made by Claimant up to that point in time in exchange for a 30 per cent share they would contribute -- pardon me -- the rest of the capex -- the majority of the rest of the capex and actually simply by taking the 30 per cent associated with the 7.63 million, you can derive an implied project value. Basically Innergex recognised the 7.63 equated to 30 per cent of the project value, so the 100 percent of that project value is 25.43. Additionally, Innergex recognised a development fee for a total project value of 26.93 for 100 percent of the equity. This is a very unique situation, as I explained before, and one that our colleagues from Versant have actually misused -- or used incorrectly, I should say. Let me explain how.

They say it doesn't actually matter what Innergex's implied valuation was; what they say is Innergex hadn't yet put the money. What matters is there's a piggy bank example they provide so this should be treated as a piggy bank, or a checking account, in which the only value comes not from the cash flow generating ability that Innergex was very aware of, but from the status of the bank accounts basically, the balances up to that date. That is how you value a piggy bank or a checking account, not how you value an infrastructure project in a preconstruction status that has an ability to determine cash flows going forward, as they recognise. It disregards the intrinsic value of the underlying asset, which is the RER Contract, and it ignores the $17.8 million in project commitments that Innergex makes, which I'll come back to in a second.

Finally they talk about a pre and post money framework. This pre and post money framework you're going to hear about or you've read about and is, according to literature presented by them actually in one of their papers, it's -- as the literature says -- for early stage companies that are comprised of often little more than an entrepreneur with an idea. Basically pre and post money valuations are used when you have two friends in a garage with an idea and one of them put a hundred thousand dollars, the other one still hasn't so the question is if I put another hundred thousand

09:28
dollars, how do we split the business? Well, 50-50. Until you do we split it 100 and zero because you put nothing. But those two entrepreneurs with an idea in their mother's garage don't have the ability to determine the cash flows or the value of the underlying asset because all they have is just an idea.

Versant presents this alleged benchmarking exercise, and I will take a moment to walk you through why literally every single bar in this chart is actually misrepresented, including ours.

First, the February 2017 offer of Innergex. As I just explained, that is not correct. It is not a piggy bank. Innergex recognised that $7.63 million corresponded to 30 per cent, not to 100 percent of the equity, so that doesn't apply. It's $26.93 million, as you see on the screen.

The $7.23 million, the Innergex model NPV, is based on a hurdle rate of 8 per cent. It is not a cost of equity or a discount rate; it is a hurdle rate, and it is explicitly said so. It cannot be used for valuation purposes; we explain this at length in our second report.

Finally -- not finally -- the four offers in 2018, I'm going to come back to these offers in a minute because these are extremely important and extremely mischaracterised in this chart. They do not reflect the additional capex. They do not reflect the value that Innergex sees in the project. I will explain this in a moment. They're not assessments of fair market value.

Finally, Versant said that their assessment of fair market value is $7.52 million. That is actually not entirely true. $7.52 million includes actual costs, both in our bar and their bar, but the $7.52 million is conveniently near the other numbers, but it's actually not correct. The $7.52 is not such. A fair market valuation which is the present value of future cash flows from that point forward of Versant is $3.4 million, not 7.5, and ours is not 31.75, it's 25.07. You see why I wanted to make that clarification about our report and table 1.

Let me turn to these offers that happened in 2018. There were four offers, two by Innergex and two by the firm Glenfarne. I'm taking just one here from November 2018 and now I ask you to look at this from the point of view of the buyer. OK? We'd be looking at fair market value in general but from the point of view of the buyer. In November 2018

Innergex says I will pay you, Latam Hydro, $7.2 million for development costs. $800,000 is goodwill for a total of $8 million. And Innergex or Glenfarne know that from that point on almost immediately they need to disburse at least $17.8 million of capex in equity on top of what will come from debt. They know they need to disburse $17.8 million in equity almost immediately.

So if you are the buyer, if you're Innergex or Glenfarne, do you really believe this project is worth $8 million? No, if you did you would be crazy, literally crazy, because you'd be paying $8 million for something that -- you'd be paying, pardon me, $25 million, that is the 8 plus the 17.8 that you are about to disburse, for something you think is worth just 8. That is not -- what Versant has done, not the correct way of interpreting the Innergex or Glenfarne offers. The Innergex and Glenfarne offers, what they do, and you can see in this slide 17, is recognise an amount of initial payment to Latam Hydro, and they recognise an amount they need to invest almost immediately.

So the implied value that they see in this project cannot be a dollar less than these figures you see here of 24.8, 25.8, 25, 25. Basically

$25 million is the minimum they saw as prospective value in this asset discounted to present value at the advanced greenfield or preconstruction stage.

So this is them buying at that time, considering the fact that they obviously want to keep some upside, they would like to extract the full amount of the intrinsic value of this asset, and for that they want to pay some amount and they would like to -- and that is comprised of the amount they disbursed to Latam Hydro, plus the amount they will disburse to the capex in the project. But that means that the value of the project itself cannot be any less than that.

Now this you see on the screen is the correct benchmarking exercise with the Innergex/Glenfarne offers and the correct numbers for both Versant and for us.

In summary -- and this is probably the most important part of this presentation and then we'll turn to some of the details -- in summary, in February 2017 Innergex valued the Mamacocha Project at $26.93 million, no less via that offer of February 2017.

In 2018 the offers confirmed that from the buyers' point of view, the value implied in the project couldn't be less than approximately $25 million, and this recognises already the advanced greenfield or preconstruction stage of the project. Our valuation considers all this and the associated risks, and happens to be very near those valuations by these sophisticated potential buyers.

It also confirms that our discount rate must be reasonable because this project is extremely sensitive to the discount rate. Extremely sensitive.

I talked about fair market value enough. $6.68 million I mentioned before is the amount of actual costs that were disbursed by Claimants that are already deducted in the DCF and therefore need to be added back. $11.19 million of pre-award interest and $2.68 million of additional expenses takes us to the total damages under a fair market value standard of 45.62. My colleague will continue with responding to Versant. Thank you.

by Mr Cardani

MR CARDANI: Thank you.

Let's now move on to our responses to Versant and its incorrect fair market valuation. Here in this slide you see a reconciliation between Versant incorrect valuation of only $3.4 million with our valuation of $25.07 million as of the DoV. **09:35** As you can see on the slide the majority of the difference is driven by the discount rate for a total of $15.9 million. Then there are four additional differences that reflect differences in expert opinion within the cash flows, but let's jump into the main component, which is the discount rate or cost of equity.

Now in these slides here the graph shows you the difference between Versant and BRG cost of equity over time. Now, this difference, as I just said, generates a large difference in total fair market value.

What are the three main determinants in areas of disagreement between us and Versant? They are the risk-free rate, the market risk premium, and the unlevered beta, as reported here on the table on the left-hand side of this slide [slide 22] so let's just dive into each individual element.

The risk-free rate, the first element. Now, in order to determine the appropriate risk-free rate to calculate the cost of equity according to the capital asset pricing model, we used the recent history of yields of the ten-year treasury bond in the 12 months prior to the date of valuation. In this way, by calculating an average metric, we effectively smoothed out daily fluctuation of the index, so our estimate of the risk-free rate and, ergo, of the valuation is very robust.

On the other hand, Versant took the second highest year in the two-year period prior to the date of valuation which is 2.6 per cent. Of course, this selection entirely biased the calculation of the discount rate.

Now, Versant framework is fundamentally incorrect and is inconsistent actually with the framework that a negotiating willing buyer and willing seller would take to value an equity stake or value in general the Mamacocha Project, right? So if you just change the valuation date a little bit and move it from, say, March 14, 2017 back to September 14, 2016, the risk-free rate would be significantly lower, as you can see from this graph, and therefore the valuation would be significantly higher.

So this methodology that they use is fundamentally inconsistent and inapplicable to determine the fair market value of a project like the Mamacocha Project.

Now, in addition to this, I would like to mention also that our estimate of about 2 per cent point of risk-free rate is actually consistent with the downward trend in US Treasury yield over the period from 2000 to 2019 and is consistent and supported with the analysis and research of economists at the Federal Reserve Bank of San Francisco in December of 2016 which say, quote, the interest rate are at a low new normal, OK? So this further corroborates and validates our choice of our risk-free rate.

Now let's move on to following component, the second component that determines the difference in our cost of equity analysis, the market risk premium. Now, the market risk premium is a measure of the systematic risk of the market portfolio. Now, in order to estimate it we used the geometric average return between 1928 and 2016 of the US market, which is a widely accepted standard approach used by valuation practitioners and academics in obtaining a rate of 4.62 per cent, as you can see here.

On the other hand, Versant selects an estimate from Duff & Phelps in 2017 of 5.5 per cent.

In our Second Report we performed a benchmarking analysis and conducted a total survey

09:39

considering a number of alternative estimations of equity risk premium presented by academics and practitioners in the period leading up to the date of valuation, as you can see here with these dark blue bars.

When you calculate the median or the midpoint of all of these surveys, the median is 4.62 per cent, which should actually correspond to the metric we select in our analysis. On the other hand, as you can see here, Versant's estimate tends to overstate the market risk premium as compared to the consensus in the industry.

Now let me also comment on an analysis that Versant introduced in their Second Report, which is entirely flawed. Essentially to rebut our survey, they calculate the total return on equity using a subset of the surveys that we used in our prior slide. This analysis is flawed for at least four reasons.

First of all, it removes and excludes the survey presented by Bank of America which indicates a risk premium of 4.6 per cent.

Second, in at least two instances, they duplicate the same survey in their analysis.

Third, and most importantly, for certain elements -- and you can see them down here at the bottom bars -- for the risk-free rate they actually use the risk-free rate average over a period of up to 116 years. This analysis is simply untenable and should be rejected.

Now, let's move on to third and last components that determines the difference between our discount rate or cost of equity and Versant's cost of equity, which is the beta.

The beta, in a nutshell, represents the exposure of a company or a project with respect to market risk where the market risk is defined as the risk of the market portfolio, which is the US market or the Standard & Poor's 500. OK?

I want to also emphasise one point and underscore that the Mamacocha Project, by virtue of the RER Contract and the sovereign guarantees set forth herein, is insulated for a large number of market risk factors, including energy prices, energy volumes, costs and foreign exchange. Furthermore, by virtue of the nature of the project, the Mamacocha Project had priority energy dispatch in the electricity market in Peru during the RER for any excess energy and after the RER for the entirety of the energy produced. So taking that in consideration one would expect the beta, or the exposure of the Mamacocha Project to market risk, to be low.

So in order to estimate our beta, as I just said, we use a very standard methodology, and we calculate the beta with respect to the market portfolio, the Standard & Poor's 500. To do so we selected as the representative industry the US power sector. By doing so, we obtain a levered beta of 0.46 per cent. Now, here it's very important to note that since the components of this US power sector index are companies that sell in the spot market, the beta would tend to overstate and not understate the exposure to market risks.

Now, let's look at what Versant has done, and what they did is incorrect and in stark contrast with academic literature on valuation standard practice.

They did calculate the beta using a selection of companies in local industries such as Brazil. Now, if you look at the literature on record, and here we just put two examples, this is absolutely something that you should not do. Koller, a reputable practitioner, says you should not, however, use a local market index to measure

09:44

the market-wide systematic risk. Professor Damodaran says the betas of all Brazilian companies, some of which Versant uses, are unreliable, so this is one important source of bias and unreliability of Versant calculation.

Second, Versant applies this beta calculated on local industries with the market equity risk premium calculated on the US market, so there is a fundamental inconsistency in these two metrics. Effectively what they do is not a methodology supported by the literature, by valuation practitioners, and this should be entirely rejected for the purpose of calculating fair market value.

Now I want to also talk about and respond to a critique raised by Versant with respect to the overall reliability of our cost of equity. Now, what Versant does is an apples to oranges comparison. Effectively what they say is if you look at BRG unlevered cost of equity, which is 5.79 per cent, and you compare it with the interest rate on the DEG loan on the Mamacocha Project, which is 7.10 per cent on average, BRG has unreliable results that do not meet corporate finance principles.

The problem of this comparison, as I said, is that it compares apples and oranges. Now let's do the comparison correctly.

So in order to do the comparison, you should look at the cost of equity of the Mamacocha Project during the very period of loan repayment when the actual DEG loan is in place, which is 7.42 per cent, and compare it with the interest rate on the DEG loan. And, as you can see from this comparison, on the left-hand side during the construction and operation and debt repayment period of the Mamacocha Project, the cost of equity is higher than the interest rate.

Second, just as a reference, this cost of equity, the 7.42 per cent, is significantly higher than the market cost of debt for companies operating in the power generation sector in Peru. Therefore, our analysis of the cost of equity does fully meet corporate finance principle, and Versant critiques are completely unfounded and flawed.

So this concludes our parenthesis on the cost of equity, right, the major difference. By the way, one note about it. The three different adjustments, effectively each of them have one-third of the effect of correcting the 15.8 damages that you saw on slide 21. OK? So risk-free, market risk premium and beta have more or less an equivalent effect to each other.

But now let's move on to respond to the other critique that Versant has with respect to our cash flow analysis. The first one is the inclusion or exclusion of the performance bond.

Now, I'm going to go very quickly on those, and there are a few back-up slides if the Tribunal has any questions later, so in the interests of time performance bond, in our opinion, does have to be considered in the cash flow calculation, because Claimants cannot simply assume that the bond will be returned. So the two performance bonds, one on the RER Contract and one on the transmission line, must be part of our discounted cash flow analysis to determine fair market value.

Second, Versant raised the issue with respect to the RER Contract sale and claim for reduction in the volume of energy produced. We think that the calculations in the critique presented by Versant are entirely speculative and inconsistent with the industry standard, as they effectively assume a particular number of dry years and a particular magnitude of those dry years over the life of the RER Contract. The adjustment is simply speculative, and if you read the record it's also in stark contrast with the testimony of Mr Bartrina and the approach used by Innergex, which, as my colleague just explained, was a willing buyer of the Mamacocha Project.

Third, the timing of the construction cost. Now, in our method, in our way of determining the cash flow analysis, we assume an even distribution of the capital expenditures in the 13-month period of construction evenly distributed. This is consistent very much with the methodology and the views of prospective investors such as Innergex.

On the other hand, Versant uses a methodology included in the Hatch report, which was not an investor and typically has inputs that represent a worst case scenario, so we reject entirely Versant's critique and we stand behind our approach.

Last, the access road contingency. In our analysis we use a contingency amount based on the Pöyry report. Versant disagrees, stating that we should use contingencies included in the Hatch report. Now, this contingency is extremely high, and again represents a worst case scenario. The contingency is about 55 per cent.

Using this contingency or a worst case scenario contingency is inconsistent with the underpinning of the fair market value standard used by a willing buyer and a willing seller, and so we reject also these critiques entirely.

Now, I want to turn the page, and I know this is a lot of information. I want to move to the next chapter which is actually relating to the actual costs that were incurred by Claimant after the date of valuation for the development of the Mamacocha Project. Very briefly, I want to emphasise the lack of basis and arbitrariness of Versant's exclusion of 40 per cent of actual cost.

Effectively Versant presents an approach that categorises in an arbitrary way the budget and actual costs of the project, and inaccurately removed about 40 per cent of these costs. Thereby their assessment of total damages is incorrect.

In addition, the second error that they incur is that they ignore unanticipated expenses including administrative and legal costs that the project did incur after the date of valuation due to the very measure at issue, so effectively they severely understate damages also for this reason, and here we included a passage of Mr Sillen's witness statement that explains this point very clearly.

Now let's move on to I would say the last key component of damages, the pre-award interest.

In our analysis we determine a pre-award interest that meets the principle of full reparation. In order to do so, we use the project's interest rate -- that is the interest rate on the DEG loan -- which provides effectively a reference interest rate or a minimum reference interest rate for a project with the same risk profile as the Mamacocha Project. So this is what you see on the left side in blue.

On the right-hand side you see Versant's three alternative interest rates used for pre-award interest. Now, none of these interest rates have any bearing or any relationship with the project, so they cannot be used to accurately estimate damages and full reparation of claim, and in particular one of them is significant, right?

They use as one of the alternative rates the US Treasury yield. It's clear that only the US Treasury can borrow at that rate, which is less than one-third of a proper pre-award interest rate that we use. **09:53**

OK. So this part concludes the review of Versant critiques to our model and our rebuttal, all of the details, and now I'm going to move on to our alternative valuation approach.

Now, we were instructed by counsel for Claimants to also calculate damages under an investment value framework. The calculation is effectively based on the total amount of investment that the --

PRESIDENT: Mr Cardani, may I ask you a question on the previous slide?

MR CARDANI: Absolutely.

PRESIDENT: Is the interest compounded? If so -- quarterly? Yearly?

MR CARDANI: Yes. Semi-annually. Our calculations compound the interest semi-annually consistent with the terms of the DEG loan.

PRESIDENT: OK. Thank you.

MR CARDANI: Thank you for your question. Unless you have any other questions I'm going to continue with the investment value approach.

Going back to the calculation of the investment value approach, it considers all of the investment and costs effectively incurred by Claimants in the period from 2011 when they started working on the Mamacocha Project up to 2020, totalling $24.27 million.

Then, in order to calculate damages and meet the principle of full reparation, we applied to each individual annual investment a rate of return equal to the cost of equity of the Mamacocha Project to reflect the opportunity that was actually lost by Claimant in connection with these investments. OK? So basically, by applying this return, we arrive at total damages of $36.29 million.

And then there is a final step. We were instructed by counsel for Claimants, as we did effectively for our fair market value analysis based on the discounted cash flow model, to also include additional expenses relating to the winding down of the project and legal expenses incurred by Claimants, which are approximately $2.68 million.

So the total damages under the investment value framework are $38.97 million, and this is kind of the baseline or the floor of damages in this case.

Now moving on to some of the critiques Versant has raised with respect to this analysis, we want to provide a few brief responses.

So the first one relates to Versant's critique that the data we used, the accounting record, is unreliable and therefore the calculation of our investment value approach is unreliable. Well, based on the explanation provided by Mr Sillen with respect to the accounting record, these accounting records faithfully reflect the cost figures for the Mamacocha Project and the upstream project, and they have been reconciled against documental evidence, so they are reliable.

Second, Versant would like you to exclude certain investment related to upstream projects. We disagree because the expenses related to upstream projects were actually related to a project that was incremental to the Mamacocha Project, so they should be included because Claimants lost these moneys due to Respondent's measure.

Third, performance bonds, and the reasons are the same for us to include the performance bonds so I'm not going to repeat what I described earlier with respect to the discounted cash flow method.

And, fourth, the capitalisation rate. As I just said, in order to calculate full compensation for the Claimant for having invested this money into a project that was terminated by the measure enacted by the government, you have to consider an appropriate rate of return that reflects the return of a project, the very return of the Mamacocha Project during the period, so the use of cost of equity is the appropriate rate to perform these calculations. 09:58

Now I'm going to bring all of this to an end, and I'm going to leave you with this summary slide that compares or presents the results of both our methodologies.

PRESIDENT: Before you do that, Mr Cardani, first of all, can you go back one slide, please? Again one slide.

MR CARDANI: Yes. This one? [Slide 33]

PRESIDENT: "all expenses incurred". So is it 24.27 million, you see, total nominal investments? If you go to page 68 of your first report, you have a table 8.

MR CARDANI: Yes.

PRESIDENT: Does that correspond to cash outlays?

MR CARDANI: Yes.

PRESIDENT: So your amount increased from 23.9 to 24.2/24.3.

MR CARDANI: Yes. **09:59**

PRESIDENT: Can you explain the difference?

MR CARDANI: I would need to go back and look exactly at the back-up, but I believe that between the First and the Second Report there was an additional reconciliation performed to make sure that any criticism raised by Versant was addressed, and actually we found out -- or Mr Sillen in reality found out that the costs were slightly higher, right? They went from 23.9 million up to 24.2 million.

PRESIDENT: OK. And now I have an elementary question. The 30 per cent equity contribution that was some 7.3, is that two different notions? The cash outlays and the capital expenses versus the equity contribution?

MR CARDANI: Well, there is a significant difference between the two numbers. OK? Just in very general terms, the $7.63 million corresponds to the investment performed by Claimants and recognised by Innergex in their offer, and corresponds to cost incurred up to approximately the time in which the two parties were negotiating in February 2017.

In reality, the total amount of

investments undertaken by Claimants was more at that date. It was about $12 million. OK? So Innergex only recognised a portion. This analysis then -- so that's one comment I have. **10:01**

Second, the second difference between that number, that 7.63 number that actually goes up to $12 million, corresponds to all of the costs, investments in additional feasibility studies and development work that the Mamacocha Project undertook after the date of valuation in the hope of continuing the development of the project.

So they are costs expensed, for the most part, up to 2018 and include also costs relating to the maintenance of the performance bond up to date effectively, so this is why you go up to $24 million because you actually consider all of the investments, all of the costs incurred by Claimants into the project.

PRESIDENT: So if I understand you correctly, at the time of the Innergex offer they said they valued at 7.3 but you said no, the actual costs were 12?

MR CARDANI: That's correct.

PRESIDENT: Then you add the performance bond, 5 million, and you arrive at 17?

MR CARDANI: Correct. **10:02**

PRESIDENT: And then for some reason you get from 17 to 24.

MR CARDANI: Yes.

PRESIDENT: How can you explain that?

MR CARDANI: This is related mostly to additional costs related to the development of the project, including additional studies performed by Claimant in the period 2017 and 2018 and include, of course, also the cost of running the project, administrative costs that were incurred by Latam Hydro during that period. They are all project-related costs specific to the development of the Mamacocha Project.

PRESIDENT: All right. I will leave it there because I assume this will be also explored on cross-examination. Thank you, Mr Cardani.

MR CARDANI: Absolutely. Thank you.

So I am just going to put back the slide which effectively concludes our presentation.

PRESIDENT: Ms Endicott, please proceed with the cross-examination.

MS ENDICOTT: Thank you, Mr President, members of the Tribunal.

Cross-examination by Respondent

by Ms Endicott **13:02**

MS ENDICOTT: Hello, Mr Dellepiane and Mr Cardani. My name is Amy Endicott, and I represent Peru in this matter. I'll be asking you some questions today.

As you've probably heard throughout the course of the hearing, we have a court reporter who is assisting us, so it will be important to speak slowly and clearly. It will also be important to let me complete my question before you begin to give your answer, and we'll try our best today to ensure that we get a clean record. Sound good?

MR DELLEPIANE: Sounds great.

MR CARDANI: Sounds good, thank you.

MS ENDICOTT: All right. So we have addressed that question.

So starting first with Sr Dellepiane, did you attend Claimants' opening statement?

MR DELLEPIANE: I did not.

MS ENDICOTT: Have you reviewed the transcripts from that date?

MR DELLEPIANE: I looked at the presentation and I had a conversation with my colleagues about it. I don't know that I consider I reviewed the transcript in that detail.

MS ENDICOTT: For Mr Cardani, did you attend Claimants' opening presentation? **10:05**

MR CARDANI: Yes.

MS ENDICOTT: And have you also further reviewed the transcripts from that presentation?

MR CARDANI: No. I had some follow-up discussion with counsel for Claimants.

MS ENDICOTT: I'm certainly not asking about your discussions with counsel, just to be clear, but thank you.

OK. So, Mr Dellepiane then, would you agree with counsel for Claimants that where the value of an investment has been destroyed, the valuation of damages should reflect the fair market value of that investment?

MR DELLEPIANE: I understand that to be the standard under which I do a great, vast majority of my work. I don't think I have an issue of disagreement or agreement; I think that's pursuant to the case law or the treaty that is invoked here.

MS ENDICOTT: Now, in paragraph 90 of your First Report you actually explain, Mr Dellepiane, that fair market value represents a standard measure of value based on a hypothetical contract between two well-informed parties in which neither the buyer nor the seller is participating under coercion. **10:06**

So you would agree, then, that it's important that both the buyer and seller are well informed of the risks of the project, right?

MR DELLEPIANE: True.

MS ENDICOTT: You also mention that neither party must be participating under what you call coercion, right?

MR DELLEPIANE: That's right.

MS ENDICOTT: And by "coercion" I suppose you mean that neither party is being induced to complete the transaction by threat or by force, right?

MR DELLEPIANE: Well, I think it's slightly broader than that. Any distress sale would also qualify as being excluded from the fair market value standard. I'm not sure we will agree on the language of course, and there's different definitions of FMV, but distress would be an important departure from the fair market value standard.

MS ENDICOTT: And in preparing your valuation you've attempted to estimate the fair market value of the Mamacocha Project as of 14 March 2017, right?

MR DELLEPIANE: Correct. **10:08**

MS ENDICOTT: And you chose that date presumably because you didn't believe that at that time Claimants were operating under coercion to sell their equity stake, right?

MR DELLEPIANE: No, we didn't choose the date.

MS ENDICOTT: So you were instructed to choose that date by counsel?

MR DELLEPIANE: We were instructed to use that date by counsel.

MS ENDICOTT: And it's your understanding that, as of that date, there was no effect from what's alleged as the breaches of the TPA or RER Contract here?

MR DELLEPIANE: Our understanding is that as of that time we have enough information to perform a clean valuation of the project under the fair market value standard.

MS ENDICOTT: And so, by clean valuation, you mean before that valuation was affected by a breach, is that correct?

MR DELLEPIANE: The main breaches that are central to the claim, as I understand it, take place from that day onwards, but we're treading dangerously close to legal opinion of what are exactly the breaches. **10:09**

We are quantifying this as of March 14, 2017, clean of the measures that are stipulated in our reports, I think paragraphs 3 and 4 of our First Report.

MS ENDICOTT: OK. Thank you.

Now, you estimate the fair market value at 14 March 2017 using a discounted cash flow, or a DCF model, right?

MR DELLEPIANE: Correct.

MS ENDICOTT: And that approach is actually endorsed by Professor Damodaran, right?

MR DELLEPIANE: The good and the bad about Professor Damodaran is that he writes a lot, a lot of stuff, so I'm sure he's endorsed -- and I know for a fact he endorses the use of DCF, but we should be careful to see in what context you refer to his endorsement of this.

MS ENDICOTT: Did you review your reports in preparation for the hearing today, Mr Dellepiane?

MR DELLEPIANE: My report?

MS ENDICOTT: Uh-huh.

MR DELLEPIANE: Yes, I did.

MS ENDICOTT: Both of them?

MR DELLEPIANE: Yes. **10:10**

MS ENDICOTT: So you are aware in your First Report, pdf page 43 at paragraph 96, you mention that Professor Damodaran actually endorses the DCF approach for fair market value, right?

MR DELLEPIANE: Let's see.

MS ENDICOTT: If it's helpful, my colleague can put that up on the screen for you.

MR DELLEPIANE: Yes. Yes, he did. Yes, he does. As I said before, I know for a fact he endorses the use of fair market value. I was just pointing out the importance to look at Damodaran's papers in their context because of how much he produces. Very prolific.

MS ENDICOTT: I would appreciate if you could just stick to answering my question.

MR DELLEPIANE: Pardon me.

MS ENDICOTT: In fact, you actually cite to no less than seven publications by Professor Damodaran in your report, right?

MR DELLEPIANE: I'll take your word for the number. I have to check.

MS ENDICOTT: And who is Professor Damodaran?

MR DELLEPIANE: He's a scholar professor

from NYU, I believe at the Stern School of Business. **10:11**
He has become very popular for both his -- how didactic he might be as well for how much he publishes in terms of compiling data and making it public. He publishes his drafts, he publishes all his writings, musings, and a lot of data, so he becomes a bit of a repository for people like us to obtain accessible data.

MS ENDICOTT: But you would only cite data that you consider reliable, right, Mr Dellepiane?

MR DELLEPIANE: That's right.

MS ENDICOTT: Is it fair to say that Professor Damodaran is a leading financial valuation scholar?

MR DELLEPIANE: He's a well-cited financial scholar, yes.

MS ENDICOTT: So you would agree he's a leading financial valuation scholar?

MR DELLEPIANE: I'm not sure what the rankings are. I would say he's very well regarded and well-cited. "Leading" means ranking and I don't believe there's such a thing.

MS ENDICOTT: I'm just confused that you don't understand what "leading" means, since those are your words and not mine at paragraph 96 of your

First Report, pdf page 43. But we'll move on. 10:12

In modelling the fair market value based on discounted cash flow, you observe that you're looking at the cash flows to equity holders, right?

MR DELLEPIANE: Right.

MS ENDICOTT: And that's because the Claimants here held equity, right?

MR DELLEPIANE: No. It's actually because the Claimants held the entire value of the project, and what we do is recognise the fact that in order to fund this project and build it, they would borrow money from loans, via loans or project finance, and that would then go to repay those loans, and therefore what remains is the equity.

MS ENDICOTT: So the Claimants held the entire value of the project. By that you mean as of March 14, 2017 their equity stake in the project was 100 percent?

MR DELLEPIANE: Yes, but also the right to the project is 100 percent, so if they chose for some reason, which would not be economically sensible, to fund the entire thing with equity and tell DEG to go home, they could do that if they felt that was a good idea. Then we wouldn't be deducting the debt and we would be doing free cash flows to the firm, not free cash flows to the equity. So the reason why we're doing free cash flows to equity is not because of them having equity rights to the project; it's because they have the entire rights to the project, and the particular way in which these projects get funded is with a large amount of debt, so therefore that needs to be deducted. Otherwise, we would be compensating Claimants for amounts that would otherwise go to the financial institution. **10:13**

MS ENDICOTT: Claimants weren't intending to fund this project only through debt, though, were they?

MR DELLEPIANE: No. They would use equity and debt.

MS ENDICOTT: And their equity investors would take how big of a stake in the company? Do you recall?

MR DELLEPIANE: It depends. There's correspondence suggesting 30 per cent, and there's correspondence suggesting they would be willing to commit 100 percent of the equity.

MS ENDICOTT: Let me rephrase that question, because I think maybe you didn't understand me. The equity investors who were going to join Claimants in this investment were asking for what percentage in exchange for their equity investment? **10:14**

MR DELLEPIANE: Are you referring to Innergex?

MS ENDICOTT: Yes.

MR DELLEPIANE: OK. So we're talking about Innergex.

Innergex was looking at contributing 70 per cent of the equity.

MS ENDICOTT: Thank you.

But, as you pointed out, as of March 14, 2017 it was Claimants who held 100 percent of the equity in Mamacocha, right?

MR DELLEPIANE: Correct.

MS ENDICOTT: And you assume the project would have achieved financial close as scheduled in May 2017, right?

MR DELLEPIANE: Correct. My colleague will address the questions on timeline of specific milestones, as he's the one who's going to cover the discounted cash flow details, but yes.

MS ENDICOTT: OK. Then I'll put this next question to Mr Cardani, and thank you for that clarification.

So, Mr Cardani, financial closing would

have included Innergex's investment in a 70 per cent equity stake of the project, right? 10:15

MR CARDANI: What do you mean by financial closing, and what document in particular are you referring to?

MS ENDICOTT: So I'll jump you back up to the question I just put to Mr Dellepiane, which is the financial closing was scheduled on 15 May 2017 or thereabouts. In May 2017. Do you agree?

MR CARDANI: Well, I would like to see the document first that you refer to indicating the financial closing on May 2017.

MS ENDICOTT: There are several documents in the record, including the Reply. Have you read the Reply?

MR CARDANI: I read some of the portion of the Reply and some of the appendices. The record is extensive, that's why I would like to be shown --

MS ENDICOTT: I will pull up the Reply for you so you can see that, but I also would just like to get a sense of how much you did understand from reading the Reply.

Are you aware that there was a milestone in the project referred to as financial close, or financial closing?

MR CARDANI: Yes. **10:16**

MS ENDICOTT: And are you aware that financial closing was a necessary prerequisite to complete the project?

MR CARDANI: Well, financial closing was one of the milestones to move forward with the project.

MS ENDICOTT: So I take it you agree, then, Mr Cardani, that financial close was a prerequisite for completion of the project, right?

MR CARDANI: Well, I'm not entirely sure by "prerequisite" what you refer to, if it's a legal issue or just operating issues. Of course to complete -- to start construction of the project the funding should have been available, and what I understand from the record is as of the date of valuation funding would have been available. There is a widespread documental evidence as well as expert testimony by Mr Whalen that supports the reasonableness and likelihood that financial closing would happen and the project would move forward, at least as of the date of valuation which is, you know, our assumed or instructed date.

MS ENDICOTT: And do you know when that financial closing was supposed to take place?

MR CARDANI: I don't recall exactly the date, so that's why I was asking you to point me to a document, just because I don't want to -- 10:18

MS ENDICOTT: We'll do that. Just give my colleague a second here. I think she's having a little trouble locating that part of the Reply. There we go.

All right. So this is paragraph 92 of Claimants' Reply. Does this reflect your recollection of when financial close was scheduled?

MR CARDANI: I'm sorry, we're not seeing --

MS ENDICOTT: There must be a lag on the screen.

MR CARDANI: One second, please. Negotiations confirmed the financial close in May 2017 and construction would begin no later than July 1, 2017.

Yes, I see that, and thank you for pointing to this statement in your Reply.

MS ENDICOTT: You're most welcome. It sounds like someone's mic isn't muted, by the way.

So let's get back to business then. In assuming that the project would be completed, you are assuming that it would have achieved financial close as scheduled in May 2017, right, Mr Cardani? 10:19

MR CARDANI: Yes, correct. OK.

MS ENDICOTT: Now, financial close as contemplated would have included Innergex's investment in a 70 per cent equity stake of the project, right?

MR CARDANI: I don't think that's necessarily true. I understand from the testimony of Mr Jacobson that in the case in which Innergex did not provide equity investment -- and that we know happened due to the measures -- Mr Jacobson was in the position to contribute equity. There is his testimony and also documental evidence in the record to support that.

MS ENDICOTT: So it's your understanding that, absent the measures, Innergex actually wouldn't have completed their investment in the 70 per cent equity stake of the company?

MR CARDANI: Can you repeat the question, please?

MS ENDICOTT: Yes. Is it your understanding that Innergex had -- let me start over.

Is it your understanding that, when Claimants achieved financial close in the but-for counterfactual scenario, it would not have included Innergex's investment in the 70 per cent equity stake of the company? **10:20**

MR CARDANI: In our but-for world?

MS ENDICOTT: Hmm-mm.

MR CARDANI: In our but-for world we do not assume Innergex is an equity investor in the project.

MS ENDICOTT: And what is your basis for assuming that the Innergex transaction would have failed, Mr Cardani -- excuse me, I'm asking the question of Mr Cardani.

MR DELLEPIANE: Yes, I'm sorry, but ...

MR CARDANI: Can you repeat it, please? I want to make sure I fully understand, and I don't.

MS ENDICOTT: Mr Cardani, what is your basis for concluding that the Innergex transaction would not have been consummated as part of financial close?

MR CARDANI: I don't -- I'm not sure I have all of elements to respond to that question. As of March -- let's take a step back. As of May 2017 Innergex, at least as far as we understand, was not any longer standing behind the offer or the February -- let's call it February 2017 offer, right? I think with that we agree.

So our valuation assumes a but-for world and the valuation date again is prior to that financial closing that you are talking about, which is May 2017. Our valuation assumes that Innergex was not part of the equation at that point and that Claimants were going -- would move forward with the project and just obtain leverage from the financier or the development bank called DEG.

MS ENDICOTT: And I'm just asking you, Mr Cardani, what's the basis for your assumption that Claimants would proceed without the equity investment from Innergex?

MR CARDANI: So the basis -- we can actually -- I can probably point you to a few paragraphs of Mr Jacobson's witness statement in which he actually explains that he would have moved forward with the equity contribution. If I don't recall incorrectly -- and maybe somebody can correct me if I'm wrong -- around paragraph 41 of Mr Jacobson witness statement that's clearly explained, and there is also I believe communication or an e-mail between the executives of Latam Hydro stating that. If I don't recall incorrectly, it's document C-213. It's one of the documents that I reviewed that kind of provided us -- that counsel for Claimants provided us with. 10:23

So our understanding, based on the facts -- and we understand that the facts may be in dispute, so I'm not in the position to take an opinion with respect to those facts -- but our understanding, based on the statement of Mr Jacobson in his witness statement -- I think it's his first witness statement, I think we also cite it in our report actually and documental evidence on record, the project would have had equity from Mr Jacobson to move forward in the but-for world.

That's our position, or our understanding.

MS ENDICOTT: We'll go ahead, since you seem very fixated on Mr Jacobson's testimony instead of the rest of the briefing, we'll go ahead and pull up Mr Jacobson's first witness statement. Just give us a second here.

Is this the paragraph you were referring to?

MR CARDANI: Well, I would need to go back and look. I think there is a series of paragraphs that are relevant, so I probably would need to review the portion and potentially our expert report in which we cite the relevant statement.

MS ENDICOTT: OK. Review what you need to review, and then let me know what you were intending to refer to, please. **10:25**

MR CARDANI: Hold on, let me -- so can I open a copy of the witness statement to actually review it?

MS ENDICOTT: You may. Just let me know when you're ready.

MR CARDANI: OK. Well, I think -- I'm not sure honestly which portion of the witness statement, but I can point you to the document I was referring to --

MS ENDICOTT: That's OK. Let's just stay on the witness statement.

MR CARDANI: In general I want to make a point about our valuation that I think is important.

Our fair market value analysis --

MS ENDICOTT: Mr Cardani, I'd love to let you make that point, but I actually just want to get an answer to my question first.

So let's go ahead and do this, and your counsel can definitely take you to that document in redirect if it's relevant to this examination.

MR CARDANI: OK.

MS ENDICOTT: Which remains to be seen.

But since we've got Mr Jacobson's statement up on the screen, let me help you out a little bit here with the context. If we could please scroll up to paragraph 40, and let me know when you've had a chance to read that paragraph, Mr Cardani. **10:27**

MR CARDANI: Yes, I see it. Thank you for the --

MS ENDICOTT: So here is Mr Jacobson testifying that Latam Hydro expected to finalise the investment with Innergex sometime in March 2017, the loan agreement with DEG sometime in May 2017, and the EPC contract with GCZ in time to begin construction on or before July 1, 2017.

Do you understand that Mr Jacobson is testifying here that Latam Hydro expected to finalise the investment agreement with Innergex?

MR CARDANI: That's what this says, yes.

MS ENDICOTT: So what is your basis, then, for assuming that in the but-for world, financial close would have proceeded without Innergex's participation?

MR CARDANI: Well, we have the -- I think --

MR ZEBALLOS: Excuse me, Mr President. I apologise for interrupting, but I do have an objection to this line of questioning. **10:29**

Ms Endicott is mischaracterising Mr Cardani's testimony. Mr Cardani never said that he assumed Innergex wouldn't invest. His testimony was "In our but-for world we do not assume Innergex is an equity investor in the project". I've been very patient with this line of questioning. This entire line of questioning has been based on a mischaracterisation of testimony.

PRESIDENT: Ms Endicott, please ask the question according to what the expert has said.

MS ENDICOTT: Sure. I'll go ahead and just ask the question according to what Mr Zeballos said.

So I believe Mr Zeballos just testified, Mr Cardani, that your testimony --

MR ZEBALLOS: I'm sorry, Mr President. I'm going to object again. I did not testify. I was repeating the witness' testimony. I don't appreciate that characterisation.

Mr Cardani's testimony at line 9.20.48 of the transcript says, "In our but-for world? In our but-for world we do not assume Innergex is an equity investor in the project".

MS ENDICOTT: So, then put differently, my question is: What is your basis for not assuming that Innergex invested in the project as of financial close, Mr Cardani? **10:30**

MR CARDANI: I'm sorry, I don't understand the question, to be honest.

MR DELLEPIANE: I do, if you want me to pick it up.

MS ENDICOTT: No, that's OK. The question was put to Mr Cardani --

MR DELLEPIANE: But I can provide an answer to the Tribunal.

PRESIDENT: Mr Dellepiane, the question is directed to Mr Cardani. Mr Cardani should answer.

MR CARDANI: What is the basis for not assuming that Innergex invested in the project as of financial close? I think that's irrelevant to our analysis, so I'm not entirely sure what else I should say with respect to that question.

MS ENDICOTT: Can you tell me why you believe it's irrelevant to your analysis that Innergex would not have -- that you can't assume that the transaction with Innergex would have been successful?

MR CARDANI: To the purpose of our valuation, it doesn't matter if Innergex is involved

10:31

or not involved in the Mamacocha Project.

PRESIDENT: Ms Endicott, may I ask a question one second?

Mr Cardani, could you please answer the question does your valuation assume that Innergex was in it or out?

MR CARDANI: It assumed that it was out.

PRESIDENT: Out. OK. Ms Endicott, please take over there.

MS ENDICOTT: OK. Thank you, Mr President, and thank you, Mr Cardani.

Financial closing would have also included DEG's agreement to lend money, right?

MR CARDANI: Yes, that's my understanding.

MS ENDICOTT: So DEG would have held debt in the project, right, Mr Cardani?

MR CARDANI: Yes.

MS ENDICOTT: And, Mr Cardani, you assume the project would have achieved commercial operation on 1 January 2020 in your model, right?

MR CARDANI: That's correct, yes.

MS ENDICOTT: And that model is modelling what would have happened in the counterfactual scenario, right?

MR CARDANI: In the but-for world. Yes.

But-for scenario.

MS ENDICOTT: So you accept that even in your but-for world or counterfactual scenario Claimants would not have achieved commercial operation by December 31, 2018, right?

MR CARDANI: Commercial operation? It would have started producing at the end of the construction period, and which we assume being at the beginning of 2020.

MS ENDICOTT: OK. So you assume that they would not have achieved commercial operation by December 31, 2018, correct?

MR CARDANI: Well, I want to point you to our understanding and instruction for that, and correct me if I misunderstood your point. Just to clarify, if you look at our First Report on footnote 15, we have an instruction by counsel to assume that Addendum 1 and Addendum 2 are still in effect as of the date of valuation and the commercial -- actual date of -- according to these two documents, these two addenda, we understand that the actual date of commercial operation start-up is March 14, 2020.

MS ENDICOTT: And you assume that the project will be in operation for 40 years, from 1 January 2020 until 1 January 2060, right?

MR CARDANI: 40 years of operation, yes, from our assumed start date of operation. **10:34**

MS ENDICOTT: So your DCF model calculates the cash flows to equity holders over 40 years and then discounts the value of those cash flows back to March 14, 2017, right?

MR CARDANI: Yes. As a standard DCF is supposed to do, correct.

MS ENDICOTT: And as of March 14, 2017 DEG had not signed a contract to loan money to Claimants, right?

MR CARDANI: I don't recall exactly the date but, again, what I would like to point you to is the expert testimony of Mr Whalen, who actually is an expert in project financing, and I think his conclusions indicate that the project would have been able to obtain financing to meet the deadlines, so I'm probably not the right person to ask those questions. That's our understanding of what the expectation and likelihood of obtaining financing was as of the date of valuation.

MS ENDICOTT: So I'll just ask again, especially since Mr Dellepiane said you're the timeline expert, as of your valuation date, March 14, 2017, DEG had not signed a contract

to loan money to the Claimants, correct?
MR CARDANI: There was a term sheet dated March 6th, I believe, outlining the condition of the DEG loan, and there is an expert in project financing that indicates that the DEG loan was on track to be finalised in order to start the construction of the project. That's our understanding based on the -- looking from the perspective of the world as of March 14, 2017, which is our viewpoint.
MS ENDICOTT: So, Mr Cardani, this will go much faster if you can just answer my question, which was as of March 14, 2017, DEG had not signed a contract to loan money to Claimant, had it?
MR CARDANI: I think I answered your question qualifying that DEG had a term sheet on March 6th that is included in our back-up, and I understand from the witness testimony of Whalen that they would have been able to reach an agreement on time to develop the project.
MS ENDICOTT: Mr Cardani, is a term sheet a signed contract to loan money to Claimant?
MR CARDANI: No.
MS ENDICOTT: Mr Cardani, has Mr Whalen testified that as of March 14, 2017, DEG had signed

a contract to loan money to Claimant? **10:37**

MR CARDANI: I think you are mischaracterising what I said. I said clearly it was based on testimony of Mr Whalen, and probably he would be the best person to respond to this question. We are just citing to him. It was likely, as of the date of valuation, that the DEG loan would be finalised on time to obtain the money to construct the project, so I think you are trying to put in my mouth words that I didn't actually state.

MS ENDICOTT: I'm actually just trying to ask you a question and get an answer, Mr Cardani, and my question was just whether or not Mr Whalen, whose testimony you clearly reviewed, testified that as of March 14, 2017, DEG had signed a contract to loan money to Claimants?

MR CARDANI: Again, no, but it was likely to be signed. I think I've said this multiple times. I've responded to the question at least three times.

MS ENDICOTT: As of March 14, 2017, DEG had not disbursed any funds to Claimants, right?

MR CARDANI: No.

MS ENDICOTT: So as of March 14, 2017, the project had no debt, correct? **10:38**

MR CARDANI: Correct.

MS ENDICOTT: As of March 14, 2017, Innergex had not invested in CH Mamacocha, right?

MR CARDANI: Correct.

MS ENDICOTT: So as of March 14, 2017, CH Mamacocha had not received any of the $17.8 million cash investment proposed in the Innergex Letter of Intent, right?

MR CARDANI: No, because Innergex had to walk away from the project, we understand due to the measure at issue in this case.

MS ENDICOTT: After performing your DCF analysis, you concluded that assuming that the project does not operate -- does operate -- excuse me. Let me start over for the record.

After performing your DCF analysis you conclude that, assuming the project does operate until 1 January 2060, the cash flows to equity holders discounted to March 14, 2017 would be 25.075 million, right?

MR CARDANI: That's correct.

MS ENDICOTT: So it is your view, then, that a well-informed buyer, operating absent coercion, would have paid 25.075 million for

10:40

100 percent of the equity of the CH Mamacocha Project on March 14, 2017, right?

MR CARDANI: That's the fair market value of the project as of that date, yes.

MS ENDICOTT: Are you aware that on 30 January 2020, the Peruvian court issued the Amparo ruling, finding that Claimants had failed to properly secure their environmental permit and declared the RER Contract void ab initio and invalidated the final concession?

MR CARDANI: I think I understand that fact, yes.

MS ENDICOTT: Are you aware that on 24 February 2021 the Peruvian courts affirmed that decision?

MR CARDANI: Yes, I understand that.

MS ENDICOTT: Are you aware that neither of these decisions is challenged as a breach in this arbitration?

MR CARDANI: Those two, well, are not part of the measures. I think the measures, if you want to go back to the specifics, are those included in our First Reports on paragraph 3 and 4, if you want me to read them together --

MS ENDICOTT: That's OK, I don't need you to read them. **10:41**

MR CARDANI: -- with the Amparo. They don't include the Amparo.

MS ENDICOTT: Thank you. So if an event isn't included as one of the measures, then it exists in the counterfactual --

PRESIDENT: Stop one second. Mr Dellepiane, are you all right?

MR DELLEPIANE: Sorry, I've been sick for a week. My poor colleague has had to endure me. I'm fine, thank you.

PRESIDENT: If I need to stop, tell me. At least let me know.

MR DELLEPIANE: Thank you very much. I will.

PRESIDENT: Mr Endicott, shall we break for four minutes, when you have finished your line of questions on this topic?

MS ENDICOTT: Yes, in just a few minutes a break will be fine.

PRESIDENT: Let me know when you want to stop.

MS ENDICOTT: And the same goes for me, Mr Dellepiane. If you're feeling sick, please do interject.

MR DELLEPIANE: I'm OK. **10:42**

MS ENDICOTT: So, if an event isn't challenged as one of the measures, Mr Cardani, it exists in the counterfactual scenario, doesn't it?

MR CARDANI: If an event is unchallenged it exists in the counterfactual? Can you be a little bit more specific?

MS ENDICOTT: No, I'm --

MR CARDANI: What event are you talking about?

MS ENDICOTT: So you just explained to us -- and to avoid an objection from Mr Zeballos, let me just read back what you said: "Those two" -- referring to the Amparo decisions -- "well, are not part of the measures"?

MR CARDANI: Yes. So you were referring to the Amparo in your question?

MS ENDICOTT: So I'm asking you --

MR CARDANI: I'm just asking you to clarify the question because I was not sure whether you were referring to the Amparo or something else in the counterfactual.

MS ENDICOTT: We can talk about the Amparo, but an event like the Amparo ruling that are not challenged as a breach exist in a counterfactual scenario, don't they?

MR CARDANI: Yes.

MS ENDICOTT: Using your DCF model, what would the value of 100 percent of the equity in the CH Mamacocha Project have been if it ceased operating on 24 February 2021?

MR CARDANI: Well, what are the assumptions of your hypothetical analysis?

MS ENDICOTT: Well, we're in the counterfactual scenario that you posit, and we're now adding a piece of information which was not alleged as a breach, which was a decision on the 24 February 2021 affirming the nullity of the RER Contract and affirming the revocation of the permits for the project --

MR CARDANI: OK.

MS ENDICOTT: -- and I'm just asking you, at that point in your counterfactual scenario, which is 24 February 2021, what would the value of 100 percent of equity in the Mamacocha Project have been if it had ceased operating on that date?

MR CARDANI: The counterfactual scenario starts as of March 14, 2017, so a willing buyer and willing seller looking at the project as of that time would take into consideration the information

10:44

available about the Amparo and factor in into the fair market value of the analysis, which is exactly what Innergex and DEG did, and we have information about it.

So effectively assuming that is the date of valuation, March 14, 2017, which is our date of valuation, and assuming that there was a proceeding in place, the value of the Mamacocha Project would be the same, 25 -- the fair market value of the Mamacocha Project, excluding the other components of damages, is about $25 million.

MS ENDICOTT: That's based on your DCF model, right?

MR CARDANI: It's based on the DCF model, and it's based on the assumption and information available to a willing buyer and willing seller. It's like, you know, it's based on basic fundamental of efficient markets, so if a willing buyer and willing seller of a certain specific amount of information as of that day, they transact based on that information, and that's reflected exactly in our analysis. It's reflected also in Versant analysis, by the way. The but-for world is the same in Claimants' position and Respondent's position.

MS ENDICOTT: So your DCF model is

assuming operation of the project in the counterfactual scenario until 2060, and then discounting the value of those cash flows back to the valuation date? **10:45**

I'm just asking you if, instead of assuming operation in the counterfactual until 2060 you assume the operation extended only until February 24, 2021 and then you performed the same analysis discounting the cash flows back to the valuation date, what would the value of the project be?

MR CARDANI: That is a hypothetical that doesn't have any bearing with reality, so let me just qualify it.

So if you instruct me to assume that the project would be in operation for a lesser amount of years, the value would be lower. I don't know how lower but, you know, I just want to emphasise the fact that this is an hypothetical, and is entirely inconsistent with the information available to the parties as of the date of valuation, so it's irrelevant for calculating damages in this case.

MS ENDICOTT: The cash flows would be negative, right?

MR CARDANI: I -- cash flows would be negative? I don't know. I don't know if the cash flow would be negative. Again, this analysis, which is entirely hypothetical, entirely misrepresents the information set as of the date of valuation, on which we agree with the opposing expert, so maybe you can ask them what they think about it. **10:46**

What I can tell you is that the value of the project would be less under this hypothetical, unrealistic assumption, because as of the date of valuation a willing buyer and willing seller would not know about the information related to the Amparo proceeding that happened at a certain point in time later.

MS ENDICOTT: In the event where ongoing or future operations of the project would have been in jeopardy even without the breaches you'd agree that the appropriate measure of damages may actually be the asset value of the company, right?

THE REPORTER: I wonder if you can repeat that question.

MS ENDICOTT: In the event where ongoing or future operations would have been in jeopardy even without the breaches, would you agree that the appropriate measure of damages may actually be the asset value of the company?

MR CARDANI: No. I disagree. **10:48**

MS ENDICOTT: That's interesting because at footnote 171 of your First Report you state that "the liquidation value will tend to underestimate the future value of the business except for situations where ongoing or future operations would have also been in jeopardy, even without the breaches."

Do you know, Mr Cardani, what the value of CH Mamacocha's assets were on 14 March 2017?

MR CARDANI: I would need to go back and do the analysis but it would be an entirely inappropriate analysis to do it that way, because you're asking me about the cost approach which, you know, I fundamentally agree with the opposing side is not the right approach. So I disagree in the first place, in the first order -- my first order of reply to your point is that we should not use a sunk cost analysis in this case, and Versant agrees with that. OK. So I don't see any utility in calculating -- or any validity in calculating damages using a sunk cost approach in this case under any assumption.

What we are asked to do is to value the project as of the date of valuation. As of the date of valuation, the appropriate method is the discounted cash flow, and on this one there is -- it's undisputed. It's undisputed in this case, and it's undisputed in prior cases related to this matter. **10:49**

So that's the go-to approach, a reliable approach to calculate damages. There is an alternative approach that looks at the investment value in the project, OK, which was part of our second -- like the very last part of our presentation, how much money was invested into the project and what would have been the return generated by that money to make the Claimants full according to the principle of reparation.

MS ENDICOTT: Are you finished, Mr Cardani?

MR CARDANI: Yes.

MS ENDICOTT: OK. Then, Mr President, I think we can take that break now.

PRESIDENT: In the examination you were directing the questions to Mr Cardani and I asked him, invited him to answer to the questions. Do you remember that? Could you please read paragraph 23 of PO6?

MS ENDICOTT: Sure.

10:50

PRESIDENT: What I mean is that the questions are basically addressed to the leader, which I understand Mr Dellepiane to be, leading expert, or lead expert I should call him, and then he can distribute the question to himself or to Mr Cardani.

MS ENDICOTT: We can certainly proceed that way. I had just understood Mr Dellepiane saying on these questions of dates Mr Cardani knew the answers.

PRESIDENT: Exactly, but it is in the context of what I directed him to answer you, and I would like to put it in proper context. So my own directions are in the context of PO6, paragraph 23.

PROFESSOR TAWIL: On each question the leading expert can decide who answers. On each question.

PRESIDENT: That's what it is. OK. Thank you. We have a recess until --

MR ZEBALLOS: Mr President, I have one point of order, then, on that clarification, which is that since Mr Dellepiane did want to give a response to that answer, that he be allowed to. We can do that when we return from the break or we can do that now if Ms Endicott wants to take us back to that question in the record, or I can take a few minutes and find that question in the record. If Mr Dellepiane would like to give a response to that question, I think he should be allowed to. **10:52**

PRESIDENT: Exactly. So if you go back to the part in the transcript where it is, then can you inform --

MS ENDICOTT: If I may interject for just one second. The question in which Mr Dellepiane asked to give an answer was about Mr Cardani's testimony, so I really don't think that's appropriate.

MR ZEBALLOS: That is not --

MS ENDICOTT: But I'm in the Tribunal's hands.

MR ZEBALLOS: I'm sorry, that is a mischaracterisation of what happened. We can go right to the transcript and see exactly what it said. Mr Dellepiane tried to give an answer, and he was interrupted.

PRESIDENT: Counsel, Ms Endicott, may I ask you to go back to that particular part where I intervened --

MS ENDICOTT: Sure.

PRESIDENT: And then can you re-enact the

Q and A, if I may invite you to do that -- this is Tribunal time -- no, when do you the question and answer there, it's Tribunal time. **10:52**

MS ENDICOTT: OK.

PRESIDENT: Because I think I was not clear in my directions in the context of PO6, paragraph 23, so I would like to rectify that. OK?

MS ENDICOTT: Sure. I'm just scrolling.

PRESIDENT: OK. Take your time. We have 15 minutes.

MS ENDICOTT: Oh, you want to just pick up there?

PRESIDENT: Yes. Let's take a break. 15 minutes. Gentlemen, you are under testimony. You are not allowed to discuss the case with anyone. Recess until now 16.10 CET.

(Short break from 10.53 EST to 11.11 EST)

[Short discussion off the record]

PRESIDENT: I ask both Ms Endicott and the expert witnesses to observe the three to five second rule between Q and A.

I see Ms Endicott is now counting three to five but, before you do that, Ms Endicott, you will do now the re-enactments and on the Tribunal's time? Can you please make reference to which part of the record you are now doing the re-enactment? **11:11**

MS ENDICOTT: Certainly. And I promise not to do any strange voices, but let's go ahead and take it from Transcript page 66, line 8, at minute 9.28.39.

Me, "Ms Endicott: So what is your basis, then, for assuming that in the but-for world financial close would have proceeded without Innergex's participation?"

Mr Cardani begins to answer: "Well, we have the, I think --"

Mr Zeballos interjects: "Excuse me, Mr President. I apologise for interrupting but I do have an objection to this line of questioning. Ms Endicott is mischaracterising Mr Cardani's testimony. Mr Cardani never said that he assumed Innergex wouldn't invest. His testimony was in our but-for world we do not assume Innergex is an equity investor in the project. I've been very patient with this line of questioning. The entire line of questioning was based on a mischaracterisation of testimony.

Mr President: Ms Endicott" --

THE COURT REPORTER: I am sorry to interrupt. I'm the court reporter. Could you please read a little slower because it is really impossible. **11:12**

MS ENDICOTT: The President interjects and says: "Ms Endicott, please ask the question according to what the expert, Mr Cardani, has said.

Ms Endicott: Sure, I'll go ahead and just ask the question according to what Mr Zeballos said. So I believe Mr Zeballos just testified, Mr Cardani, that your testimony --

Mr Zeballos: I'm sorry, Mr President. I'm going to object again. I did not testify. I was repeating the witness' testimony. I don't appreciate that characterisation. Mr Cardani's testimony at line 9.20.48 of the transcript says: In our but-for world, question, in our but-for world we do not assume Innergex is an investor in the project.

Ms Endicott: What is your basis for not assuming that Innergex invested in the project as of financial close, Mr Cardani?

Mr Cardani: I'm sorry, I don't understand the question, to be honest.

Mr Dellepiane: I do, if you want me to pick it up.

Ms Endicott: No, that's OK, the question was put to Mr Cardani.

Mr Dellepiane: But I can provide an answer to the Tribunal.

President: Mr Dellepiane, the question is addressed to Mr Cardani. Mr Cardani should answer".

PRESIDENT: OK.

MS ENDICOTT: And then Mr Cardani gives his answer, and I would just like to clarify that, as the record shows, this was a question to Mr Cardani about his testimony for a question that he answered and therefore I ask the Tribunal to take that into consideration when deciding whether or not Mr Dellepiane should be allowed to testify about Mr Cardani's testimony. Thank you.

PRESIDENT: Ms Endicott, can you now ask Mr Dellepiane to answer the question, as he offered?

Mr Dellepiane, can you answer the question? Because you interfered, you said, look, I would like to answer the question.

MR DELLEPIANE: Thank you, Mr President. Let me make sure I read the question. It was asked three times in different ways, so I'm going to read the last one, I guess, as the one in discussion.

The question was: "What is your basis for not assuming that Innergex invested in the project as financial close?" **11:15**

The answer is that we did not make an assumption one way or another about Innergex's participation in relation to our but-for analysis. Our but-for valuation, the fair market valuation, does not make an assumption about Innergex. It is Innergex neutral. It says what are the cash flows, what are the revenues and costs that this project would have achieved, and we do that so that we can obtain the fair market value also understood as the intrinsic value, the value of the cash flow the project can generate. Our valuation once again is Innergex neutral.

So this idea that Innergex would have been assumed to close or not assumed to close; assume, too, the transaction had failed as it was represented before; these are not assumptions that are made or are relevant to our DCF valuation. Thank you for giving me the opportunity to clarify that.

PRESIDENT: Ms Endicott, this ends the re-enactment. You may continue your cross-examination. Now it's your time again.

MS ENDICOTT: Thank you.

Mr Dellepiane, you just testified that

your model is Innergex neutral. Do you consider excluding Innergex's investment, which was planned to take place, to be neutral? **11:16**

MR DELLEPIANE: Once again, it doesn't consider it one way or another. You just said considering it excluded whether it's neutral or not, but I'm not sure what makes you say that it's being considered excluded. It is not considered one way or the other. Once again, you put words in our mouths that we are considering excluded when that's actually not what we are doing. We are simply calculating the cash flows without consideration for whether the investment would come from Innergex or not, which is not the same as to say that the transaction would have failed, would have not closed, or that we're excluding Innergex from the mix. They are different things.

MS ENDICOTT: Are you finished?

MR DELLEPIANE: Yes.

MS ENDICOTT: Mr Dellepiane, would you agree with me that included is the opposite of excluded?

MR DELLEPIANE: Generally speaking, sure.

MS ENDICOTT: Did you include the Innergex investment in your DCF model?

MR DELLEPIANE: We did not model the DCF in a manner that considered the identity of any of the buyers, whether it's Innergex, Latam Hydro, Mr Jacobson or anyone else. That's why the distinction is so important, because fair market values are agnostic to any of these people. **11:17**

MS ENDICOTT: Did you include the Innergex investment in your DCF model?

MR DELLEPIANE: No, but we did not assume it failed to close. We did not assume that it didn't go through. You see, these are very different things. That's why I said generally speaking excluded and included may be antonyms but they're actually not in this case, because it's not the same to say that Innergex has walked away or that Innergex is not being considered and so on than to say that none of the parties -- that the valuation is agnostic to the identity of the parties, which is required by the fair market value standard.

MS ENDICOTT: We've talked a bit about fair market value, haven't we, Mr Dellepiane?

MR DELLEPIANE: Yes.

MS ENDICOTT: And when you're considering the buyer in this fair market value scenario, you're considering the buyer of what Claimant would have been selling, right? **11:19**

MR DELLEPIANE: No, I consider the 100 percent. You look at the buyer in terms of understanding whether the analysis shows that there would be -- from the point of view of a buyer -- pardon me, from the point of view of a buyer, the analysis makes sense or not. You don't consider the buyer whether it's 2 per cent or 98 per cent, that's irrelevant to the exercise because you're seeking to determine the value of 100 percent of the asset.

The identity of the buyer is irrelevant and in fact the existence of a potential buyer, and this is well established in the literature in financial economics, the identity and the existence of a buyer is also irrelevant. So you might have an infrastructure project that costs $5 billion to build and you might say how many companies in the world could possibly buy that, have the deep pockets to acquire that. It doesn't matter. That is not relevant to the fair market value standard. We do not need to identify a potential buyer, a prospective buyer. We need to understand the economics from the point of view of a putative buyer and a putative seller.

MS ENDICOTT: The damages that you're calculating here you testified are based on fair market value, right? **11:20**

MR DELLEPIANE: Correct.

MS ENDICOTT: And fair market value is the price that a willing buyer would pay for that company, right?

MR DELLEPIANE: Yes. That's exactly the importance of looking at the offers by potential buyers from the lens of those perspective buyers, as I showed this morning.

MS ENDICOTT: But the damages that Claimant receives, which would be the price, ought to correspond to the amount of that company that Claimant owns, right?

MR DELLEPIANE: Yes. 100 percent of the company was owned by Claimant in this case, so yes, we're valuing a share of 100 percent. That's what we're seeking out to do, both us and Versant.

MS ENDICOTT: Now, in your report you also refer to the intrinsic value, in quotes, of the Mamacocha Project, right?

MR DELLEPIANE: Yes.

MS ENDICOTT: Is that the same as the fair market value of the Mamacocha Project?

MR DELLEPIANE: For all practical purposes, yes, we understand it to be the same. Intrinsic value, some treaties have it as value reale, or real value in French -- pardon me, my French is horrible. Fair market value, fair value, market value. There are different legal authorities and economic and financial and economics authorities describe it differently, but they're all seeking to determine the intrinsic value, which is the cash flows and the money it can produce. That asset, right? Assets have value because of what they can generate in the future, whether by selling them or by exploiting them, and in this case it's by exploiting it. That's the intrinsic value, is to determine what is it that one can actually squeeze out of this asset, so to speak. **11:21**

MS ENDICOTT: So if the intrinsic value is the same as the fair market value, then the intrinsic value is the price that a willing buyer would pay and a willing seller would accept, right?

MR DELLEPIANE: In equilibrium once a transaction is consummated, fair market value, if it's under arm's length, under the conditions, no distress, no coercion, et cetera, et cetera, then one seeks to understand how those two coincide. And

11:22

yes, when there's transparent information and the buyers know what they're buying and they can see that they need to deploy in this case $25 million or more, and there will have to be revenue streams to overcompensate for that, meaning to make at least that and more to get a return on that investment, then we have information to actually say I see how the intrinsic value can become the fair market value. That's exactly the exercise we pursued.

MS ENDICOTT: In calculating your DCF -- I'll put this question to you, Mr Dellepiane, because I believe Mr Cardani answered it earlier, but in calculating your DCF you look at free cash flows to equity holders, right?

MR DELLEPIANE: Correct.

MS ENDICOTT: That's the money that flows back to equity holders discounted to the valuation date, right?

MR DELLEPIANE: Correct.

MS ENDICOTT: And you explain that in order to apply the DCF method using free cash flows to equity holders "we explicitly calculate the free cash flow available to equity holders after taking into account all payments to and from debt holders", pdf page 45, paragraph 102 of your First Report.

So in calculating cash flows you work on the assumption that debt holders get their cash first, right?

MR DELLEPIANE: Yes, that is the normal assumption, that debt has seniority over equity.

MS ENDICOTT: So you'd agree that debt holders have a direct claim on the company's free cash flows whereas equity holders can only receive residual free cash flows after all the other obligations, including debt, have been satisfied?

MR DELLEPIANE: In general terms, that's correct. There are all kinds of interim mezzanine structures but, for purposes of this case, we have a very simple direct observation which is you have total firm project cash flows, part goes to debt, the rest goes to equity.

MS ENDICOTT: Thank you. And, just for the record, I was quoting from Versant's First Report, paragraph 87.

In fact, debt holders are always paid out before equity investors, right?

MR DELLEPIANE: I think I just answered that saying generally yes, in this case that's the construct that matters. There's obviously all kinds of very complex structures that financiers and lawyers have designed to get around all kinds of issues.

MS ENDICOTT: But you're not talking about those structures here, right?

MR DELLEPIANE: Like I just said, this has a very simple framework. Total firm value gets first to the debt holders, then to the equity.

MS ENDICOTT: So in the event that there's not enough money left in the company coffers to pay both the debt holders and the equity holders, the debt holders get paid and the equity holders might not, right?

MR DELLEPIANE: Yes. That's why the cost of equity is higher than the cost of debt. It's a more risky instrument. And in this case both Versant and us conduct a free cash flow to equity in order to reflect that, that the debt gets paid first. Yes, that's 100 percent true.

MS ENDICOTT: So equity holders demand a higher rate of return for their riskier investment than debt holders do, right?

MR DELLEPIANE: Somewhat. It depends on the place at which and the time at which they're investing, so we have to compare apples and apples, as my colleague explained this morning, but all else

11:26

equal and as of exactly the same point in time in the same stage of the project what you said would be correct, that the debt holders would require a return lower than the required return by the equity holders, in that same place and time, at the same stage of development of the project. This cannot be generalised across the lifespan of a project, which is what our colleagues did in making that comparison.

MS ENDICOTT: The rate of return for equity holders is sometimes called the cost of equity, right?

MR DELLEPIANE: Well, now we enter into very dangerous territory. It is sometimes called cost of equity, to answer your question, but we have to be very careful to understand what we mean by return required by equity holders, because the cost of equity seeks to understand what is the minimum required return by equity holders that satisfies their risk profile of that particular investment, which is not to say that equates to the hurdle rate or expected rate of return or internal rate of return of the project. These are all terms which people use sometimes interchangeably, and should never use interchangeably. They're not.

MS ENDICOTT: Mr Dellepiane, just to be clear, I didn't ask you about the required rate of return. I just asked you if the rate of return that equity holders receive is sometimes called the cost of equity. **11:27**

MR DELLEPIANE: Yes. Your question was even more general than required rate of return. That's why I made the clarification.

MS ENDICOTT: Mr Dellepiane, do you agree with Professor Damodaran that the cost of equity can never be lower than the cost of debt for any firm at any stage in its life cycle?

MR DELLEPIANE: I would have to look in what context that is written in those words by Mr Damodaran but, as I said before, to say that at any point at any cycle I am surprised by that generalisation because Professor Damodaran would understand that if you buy into a project before it's built as an equity holder, you might require a 5 per cent or a 20 per cent return -- I don't know what the situation might be -- but fast forward 20 years when the project is in operation, you might require a totally different return, and to say that those are always going to be higher or lower than debt rate as of the other points in time is a very dangerous generalisation I would not agree with at all. I would have to look at what he wrote, but I don't think that's what he meant. **11:29**

MS ENDICOTT: So we'd all like to look at what he wrote in just a second but, just to clarify, is it your position in this arbitration and before this Tribunal, that the unlevered cost of equity for a particular project may be lower than the tax-free cost of debt?

MR DELLEPIANE: As of what time? As of the time when the project is unlevered? Absolutely. As of the point in which -- let me clarify the answer.

The unlevered cost of equity of a project will be lower than the levered cost of equity of a project. Now, will it be lower than the cost of debt when the project is still in construction or preconstruction? We don't know. In this case it's not. But there's nothing surprising about that.

As you saw from my presentation the cost of equity evolves, so does the cost of debt, so you cannot compare them across different points in time because the project is in such vastly different status of development.

MS ENDICOTT: Mr Dellepiane, you started talking about the levered cost of equities. I'll just ask my question again.

Is it your position in this arbitration and before this Tribunal that the unlevered cost of equity for a particular project may be lower than the tax-free cost of debt?

MR DELLEPIANE: As of that time it is not my position that the unlevered cost of equity will result in a lower -- would be consistent with a cost of debt that is higher, and that is exactly what we pointed out, that you cannot compare an unlevered cost of equity in a project with a debt rate for a project that is 70 or 80 per cent levered. The 7 per cent of DEG, 7.36 per cent of DEG, is a rate for a project that's going to be mostly 70 to 80 per cent debt financed.

DEG -- ask DEG what their rate would be if you wanted 1 per cent financing. They would certainly not charge you 7 per cent; they would charge you some other rate, presumably, and very likely below 5.7 per cent, because that would be commensurate with an unlevered project.

You see, the thing is, by calling it as you just did, and by referring to an unlevered cost of equity, you're looking to a project that has no debt, and if it has no debt, as you just told me, who is responsible and owns 100 percent of the cash flows? The equity holder. There is no debt. There is no risk to the equity holder of getting paid what you called the residual value. They get all of it. And if they get all of it, they're just like a debt holder. **11:31**

So you cannot compare an unlevered cost of equity with a cost of debt of a project that is highly leveraged.

MS ENDICOTT: Let me ask it to you this way, Mr Dellepiane.

Let's assume you own a company and you're looking to finance it, and you approach two potential investors. One of them says I can make an equity investment in your project and the other says I can make a debt investment in your project. Do you think there's a world in which the equity investor would accept a lower return than the debt financier?

MR DELLEPIANE: No, and that's why we point out that when you're looking at a project that has mostly finance with debt, at that point in time, as I showed this morning on page 11 of my presentation, the cost of equity was about 8 and a half per cent, 8.54 per cent, because it has 171 debt to equity ratio, given the fact that all the cash flow is leveraged. **11:33**

But when you fast forward a few years and you start seeing that -- and at that point, so 8 and a half per cent is the cost of equity and the cost of debt was 7.36. Then the cost of equity continues for several years above 8 per cent and the cost of debt is at 7 per cent, so this relationship is maintained in absolutely clean terms.

Now, what happens after several years? The project becomes delevered meaning the debt is being repaid. At that point the equity holder sees less and less and less risk because the project is being derisked, and with it is being delevered. At that point in time the comparison that matters is an unlevered cost of equity with a market cost of debt, not with a cost of debt of when you were actually looking for financing and only one or two institutions might be willing to give it to you because you're looking for 70 or 80 per cent of the debt.

So I think I've answered your question -- I hope I've answered your question.

MS ENDICOTT: For the Mamacocha Project you and Versant agree that the cost of debt is between 7.06 and 7.36 per cent, right?

MR DELLEPIANE: We agree with using the interest rate for the construction and first 16 years of operational period as per the term sheet from DEG.

MS ENDICOTT: Do you agree that the cost of debt for that project is between 7.06 and 7.36 per cent, Mr Dellepiane?

MR DELLEPIANE: We agree with using that interest rate as the cost of debt to put into our DCF model. I'm not trying to be difficult in the clarification; I think it's an important distinction, the one I'm making, and we have to be careful with language here.

MS ENDICOTT: You then state at footnote 31 of your First Report that the cost of equity varies between 5.79 and 8.63 per cent depending on the effective level of debt of the Mamacocha Project between 0 per cent and 63.93 per cent.

You draw a distinction there between the levered and unlevered cost of equity, right?

MR DELLEPIANE: Yes.

MS ENDICOTT: So the levered cost of equity is the cost of equity for a project when it also has debt, right? 11:36

MR DELLEPIANE: Right.

MS ENDICOTT: And the unlevered cost of equity is the cost of equity for that project when it doesn't have debt, right?

MR DELLEPIANE: Right.

MS ENDICOTT: So in the year where the "effective level of debt of the Mamacocha Project is 0 per cent" the cost of equity in your model is the unlevered cost of equity, right?

MR DELLEPIANE: That's right.

MS ENDICOTT: And you state that that cost of equity is 5.79 per cent, right?

MR DELLEPIANE: That's right.

MS ENDICOTT: This is also reflected in your model, which for the record is BRG-003, and if I could ask my colleague, Mr Alvarez, to pull up BRG-003 and go to the sheet titled "Discount rate summary", row 21, column I.

MR DELLEPIANE: I should point out that that's from the First Report and there are some small differences in the second model, some corrections and small changes, but we can use whichever one you prefer.

MS ENDICOTT: Do you change the unlevered rate of equity in your second model to be more than the rate of debt on the project? **11:37**

MR DELLEPIANE: That's a bit of a loaded question. I think we can talk about the levered and unlevered cost of equity independently of which model, if that's what you're pointing out.

MS ENDICOTT: Do you change the unlevered rate of equity in your second model to be more than the rate of debt on the project?

MR DELLEPIANE: The unlevered cost of equity in the -- sorry, I can't see anything. We're going to have to put this in a normal view format for me.

MS ENDICOTT: Mr Alvarez, if you can just take the screen down for a minute so Mr Dellepiane can focus on answering my question, and I'll read it back to you, Mr Dellepiane.

In your second model, do you change the unlevered rate of equity to be more than the rate of debt on the project?

MR DELLEPIANE: Well, on the unlevered cost of equity there is no debt. That's the whole point. By that time the equity holder is as good as the debt holder, so it doesn't need debt. It doesn't care about debt. It's got no leverage.

It's got claims on 100 per cent of the cash flows, as you put to me earlier.

MS ENDICOTT: Mr Dellepiane, in your second model do you change the unlevered rate of equity to be more than the rate of debt on the project?

MR DELLEPIANE: There is no debt, Ms Endicott. There is no debt. You're comparing something that cannot be compared. I just explained it three times.

In the event when the project is unlevered, there is no debt, so what debt are you referring to? What cost of debt? You're referring to a cost of debt from 20 years prior or 15 years prior when the project wasn't even built, so if you want me to say that 5.7 is a lower number than 7.06, I can agree with arithmetically those two numbers being one greater than the other or one smaller than the other, but if we're going to have an intelligent conversation about the fact that the cost of equity on an unlevered basis for a project equity holder that has 100 percent of the claims over the cash flows is or isn't higher than the cost of debt, the question then becomes what cost of debt. There is no debt at that time.

11:39

MS ENDICOTT: Mr Dellepiane, I can tell this question is difficult for you but I just need you to answer it for me. In your second model --

PRESIDENT: Ms Endicott, don't forget the 1, 2, 3, 4, 5 count. OK?

MS ENDICOTT: Mr Dellepiane, I can tell this question is difficult for you but I would like you to please answer for me do you change the unlevered rate of equity in your second model to be higher than the rate of debt on the project?

MR DELLEPIANE: The unlevered cost of equity in the model is not comparable, is not higher or lower. It doesn't exist when there's no debt. It exists when there is -- sorry, it exists only when there is no debt. So the way you're asking this question, in intellectual honesty I cannot answer it, because you're asking me whether a number is higher or lower than a number that doesn't exist at that point in time in the project, so it is not an intellectually honest answer that satisfies you or anyone if I tell you that 5.7 is lower than 7.06, because they don't exist at the same time.

MS ENDICOTT: Mr Dellepiane, I'm just asking you whether you changed the number for unlevered equity between your first model and your second model such that in your second model the unlevered cost of equity is higher than the cost of debt for the project, asking if you made that change. Did you?

MR DELLEPIANE: You're not asking if I made that change, you're asking if I made that change and you're adding something else. I did not make a change in the model that changes the levered cost of equity. But you're adding a second part to the question which is in a way that makes it higher than the cost of debt, and I'm telling you I cannot agree with the premise of that question in an intellectual, honest manner, because that rate of debt does not exist in year 15, Ms Endicott. And I've answered this four times now, honestly.

MS ENDICOTT: Mr Alvarez, or whoever is controlling the screen, could you go ahead and put up, please, BRG-003, sheet discount rate summary, row 21, column I? And we've got to get to the right sheet, which is discount rate summary. This is income tax.

Do you recognise this model, Mr Dellepiane, assuming you want to answer these questions and not Mr Cardani?

MR DELLEPIANE: Yes, I do.

MS ENDICOTT: You see row 21 is titled "Cost of equity"? **11:42**

MR DELLEPIANE: Yes.

MS ENDICOTT: And you row 18 refers to the debt equity ratio?

MR DELLEPIANE: Yes.

MS ENDICOTT: The debt equity ratio in row 18, column I, is zero, right?

MR DELLEPIANE: Correct.

MS ENDICOTT: And what is the cost of equity there listed?

MR DELLEPIANE: 5.79 per cent.

MS ENDICOTT: And that's the unlevered cost of equity, right?

MR DELLEPIANE: Correct. No debt.

MS ENDICOTT: And this is preconstruction in a project that will assume debt for 15 years, right?

MR DELLEPIANE: Correct.

MS ENDICOTT: Let's take a look here. Then if we want to get to the levered cost of equity, we're going to apply a debt to equity ratio to that unlevered cost of equity, right?

MR DELLEPIANE: No, not exactly.

MS ENDICOTT: Let's just take a look, then, at a year where we have debt and we have a levered cost of equity, so if we go to row 18 and we jump from column I over to column J, we see the addition of a 43.42 per cent debt to equity ratio, meaning the debt obligation has commenced here, right?

MR DELLEPIANE: Yes.

MS ENDICOTT: And if we look at the variables that are going into the cost of equity, and in particular into the beta, we see that the change that is being made there is the addition of a debt to equity ratio, correct?

MR DELLEPIANE: Yes, but it's not being made directly to that; it's being made to the beta, the coefficient correlates the market performance to the asset performance -- sorry, the asset volatility to the market volatility.

So the application of a debt to equity ratio is not direct. It's indirect. There's an indirect step which is the relevering of that beta, and I understand this may be painful for some, but there's a few permutations involved in getting from one point to the other. It's not just applying, as you said, a debt to equity ratio to the cost of equity.

MS ENDICOTT: The only factor that's changing in the calculation of the beta between column I and column J is the addition of a debt to equity ratio, correct? **11:45**

MR DELLEPIANE: Yes. Indeed.

MS ENDICOTT: And if we return to row 21 in the year where the project has taken on debt, you see a cost of equity of 6.48 per cent, right, Mr Dellepiane?

MR DELLEPIANE: Yes, for that year, that's correct.

MS ENDICOTT: Is 6.48 per cent less than 7.36 per cent, Mr Dellepiane?

MR DELLEPIANE: Yes, for that particular year it's lower. The average is 7.42 per cent, as I showed this morning, and this relationship is maintained for the vast majority of the years. There's a couple of years where you have, you know, a bit of a lag problem because you're acquiring the debt and, you know, this formula through the beta is doing what you just pointed out, but there's nothing surprising about that. You're valuing a 40-year project. You have a couple of years where this relationship, you know, is reversed for a few basis points. It's nothing surprising. As soon as you're in year 2, what you have is a fully leveraged project with a cost of equity of 8.26 per cent, far, far above the cost of debt.

MS ENDICOTT: And I'm actually just asking about year 1, so the 6.48 per cent levered cost of equity is lower than the 7.36 per cent cost of debt, right?

MR DELLEPIANE: In that particular year, yes, by 90 bases points. Yes.

MS ENDICOTT: --

MR DELLEPIANE: I'll give my answer again. In that particular year, it is lower.

MS ENDICOTT: So your model violates the principle that Professor Damodaran endorses, right?

MR DELLEPIANE: No, it doesn't violate the principle. The average cost of equity in our model is 7.42 per cent. The average cost of debt in our model is in the low 7 per cent. I have the number right in front of me. 7.1 percent, I think. And, in fact, that's not even including the refinancing which we were very conservative not to include at the market cost of debt. So, no, the model doesn't actually on first principles or on its dynamic violate this principle. These particular years in which this relationship is reversed, there's nothing concerning about that. We need to understand what this model is actually doing. And, by the way, in year one of discounting there's virtually no discounting, so it's actually the most irrelevant of all the years. **11:47**

MS ENDICOTT: So your masking your deviation from that principle in averages, is that what you're saying, Mr Dellepiane?

MR DELLEPIANE: No, I don't think you need to accuse me of masking it. I'm being very transparent about it.

MS ENDICOTT: I'm just trying to be intellectually honest, as you would say, Mr Dellepiane.

PRESIDENT: Can you both please observe the 5-second rule?

MS ENDICOTT: I know, Mr Dellepiane, you wanted to take a look at what Professor Damodaran said, so I'll ask my colleague, Mr Alvarez, to pull the spreadsheet off the screen and let Mr Dellepiane take a look.

For the record, this will be Versant Partners exhibit 3, Damodaran Applied Corporate Finance, Third Edition, page 72.

You see there, Mr Dellepiane, a question in box 4.9, "Cost of debt and equity". "Can the cost of equity ever be lower than the cost of debt for any firm at any stage in its life cycle?" **11:48**

And can you scroll down to the answer, please? And there's the answer to this pop quiz. "No. Equity investors are always behind lenders in the line for cash flows (on an annual basis) and for assets (on liquidation). They should therefore demand a higher return".

Mr Dellepiane, doesn't your model violate this rule?

MR DELLEPIANE: No, it doesn't. It doesn't. As I said, on first principles and on the effects because of what I just explained, and if you look at how the discounting operates, it doesn't violate this rule. And, as I said before -- by the way, earlier you read this to me without saying, you know, at any stage. Damodaran is very clear about the stages of development of a company. You probably forgot to mention that part. No, we're in complete agreement with Mr Damodaran about this.

MS ENDICOTT: The answer here -- and I'll just read the question again which I read verbatim in my prior question to you, Mr Dellepiane, and I invite you to check the transcript -- the question is can the cost of equity ever be lower than the cost of debt for a firm at any stage in its life cycle.

Did you see that?

MR DELLEPIANE: I do.

MS ENDICOTT: Thank you. We can take that down. Thank you to my colleague.

In your report, Mr Dellepiane, you point to the Innergex offer of February 2017 as evidence of the fair market value of Claimants' investment, right?

MR DELLEPIANE: I do, but are you referring to a particular report? We have two.

MS ENDICOTT: That answer will suffice.

To assess the project, Innergex developed its own financial model, right?

MR DELLEPIANE: That's my understanding. There is a so-called Innergex model, yes, which I believe was --

MS ENDICOTT: Do you have --

MR DELLEPIANE: Go ahead.

MS ENDICOTT: Do you have any reason to doubt the authenticity of that model, Mr Dellepiane?

MR DELLEPIANE: No, but I do have certain issues with the model itself, several issues with the model itself, which -- **11:51**

MS ENDICOTT: I'm sure your counsel can take you there.

MR DELLEPIANE: No, hold on a second, Ms Endicott. I'm pointing out something. You said "authenticity" and I'm just building on that. I'm saying I don't have a problem with authenticity in the sense that I don't think anyone is -- I have no reason to believe anyone has misrepresented the origin or provenance of this model, but there is a problem with the model itself. I invite you to open it up right now and try to use it and see what happens. I'm sure you have tried because you have done Excel, and if you open that model what you will find is that it requires a password. It's password protected. It cannot be run. It has macros that have been blocked, and we have not been able to obtain the password to those macros to unblock them. So if you want to talk about the Innergex model, I have to tell you that there are several serious issues with anything that we talk about when it comes to the Innergex model.

MS ENDICOTT: Are you aware that the Innergex model was introduced into the record by Claimants?

MR DELLEPIANE: I believe we introduced it into the record. Was it Claimants, or was it us? **11:52**

MS ENDICOTT: Well, it's in there I think more than once, both as exhibit C-0047 and BRG-0040.

MR DELLEPIANE: That's what I thought. Yes, we introduced it.

MS ENDICOTT: And are you aware that Claimants introduced the model into the record as password protected?

MR DELLEPIANE: My understanding is there's no other version. I tried to solve that, and there is no other version.

MS ENDICOTT: And have you been able to open the model on your computer, open the document?

MR DELLEPIANE: I've been able to open it, with very -- with limited use, because the model, as soon as you try to enable its functioning, blocks and shuts down. Literally closes. So it's very limited what one can do with it and understand its formulas. There are some things that one can do, I'm not rejecting that, but there are several limitations which I was pointing out before.

MS ENDICOTT: This is the first time you've raised the absence of a password to the model as an issue to your ability to assess its inputs, right?

MR DELLEPIANE: I don't know if I've raised this before. I've done with the model what I could do with the model, and I'm not trying to pull from the model what doesn't need to be pulled from the model, especially when Innergex has a document from days before the valuation date that tells us exactly how much they're valuing this project at, and the model itself is of very little use compared to a piece of paper that says here's an offer, here's how much we wanted to pay for this project.

MS ENDICOTT: The model applied an 8 per cent cost of equity, right?

MR DELLEPIANE: No. Absolutely not.

MS ENDICOTT: Can we go to C-0047, BRG-0040, sheet inputs, row 95, column C, please.

MR DELLEPIANE: Exactly. Thank you for pointing to it on the screen. The discount rate is 8 per cent. It's not a cost of equity. And that's why I made the distinction earlier that we have to be very careful what is a discount rate, what is a hurdle rate, what is a cost of equity, what is a minimum required return, what is an IRR, and so on and so forth. Very careful.

MS ENDICOTT: So you draw a distinction between the discount rate and the hurdle rate, right? **11:55**

MR DELLEPIANE: That's exactly what we explained in our report, yes.

MS ENDICOTT: But in your report you actually refer to this rate as a hurdle rate, and you state that in your Second Report, pdf page 72, paragraph 152, and actually you cite to Professors Berk and DeMarzo there for the explanation of a hurdle rate saying: "If the project can jump this hurdle, that is have a positive net present value at this higher discount rate, then it should be undertaken".

That is your quotation of BRG-0094, J Berk and P Demarzo Corporate Finance, Fourth Edition, 2017 at page 848.

So my question, Mr Dellepiane, is in other words for Innergex this is a minimum cost of equity that Innergex would need to receive in order to invest in the project, right?

MR DELLEPIANE: No, we don't know that for sure actually. We know this is a rate that was put there as a hurdle rate -- again, the hurdle rate is a big word, it's a big catch-all for all these rates that investors use to say well, how do we test this, but no, what you just said is not something we can attest without asking Innergex. **11:56**

What I can tell you are several things. One is that Innergex itself looks at this project and says, whether it's in 2017 or in 2018, it looks at this project and says if I pay out the existing owners because they're tired of putting money into this, they're tired of Peru -- whatever reason, I don't know, they're in distress, they want to walk away, I'm not sure what they think, but they pay them off, and they need to put another $17 or $18 million, Innergex is all in for $25 million. So unless the model can generate net cash flows to equity holders in present value terms greater than $25 million, they're not going to go in. And we know they wanted to go in. So the logical inference is that they actually saw value above and beyond $25 million.

The reason why this model may not reflect that is several. One is this rate, which we don't know its provenance. Two, the prices that it used are about half of the prices that were calculated by a sophisticated, independent dispatch modeller, BA Energy Solutions. Innergex took a price and just leave it forward without actually doing a price analysis.

There are several problems with this model, not to mention, like I said before, we can't actually trace any of its formulas because when we open it, it falls apart.

MS ENDICOTT: You can't actually trace any of the formulas in the BAES electricity pricing either because they're hard-coded, aren't they, Mr Dellepiane?

MR DELLEPIANE: That's because it's a product of a linear programming model. If you've ever done any electricity work -- and I've done quite a bit of it -- dispatch modellers produce the results in this way and produce a report or a document or an appendix that explains their assumptions, and assumptions which can be put into any other linear programme in dispatch modelling software programme, or it can be programmed from scratch which is really tedious to do, and in the case of Peru they can be given to COES or any of Peru's agencies to run and verify. So no, not at all a fair comparison.

The dispatch model that BA Energy Solutions provided is fully auditable and traceable by any engineer who has done one bit of dispatch modelling. Not at all the same. **11:59**

MS ENDICOTT: Sounds like you're one of those engineers who has done a bit of dispatch modelling, Mr Dellepiane. Did you do that verification?

MR DELLEPIANE: I am not an engineer, and I have never done dispatch modelling myself. I have used the product of dispatch modelling, and I've been involved in disputes in which the other side actually has used the results of the dispatch model equivalent to the one that I presented from BA Energy Solutions, come up with their own verification and said, hey, we don't like this input or that input, and we've had a back and forth between the dispatch modellers or between the experts who have used the assumptions and the products of those dispatch models.

What I'm saying is there is a level of expertise and there's a level of transparency that I'm used to when it comes to discussing dispatch modelling.

MS ENDICOTT: So if you're not that kind of engineer, then did you have that verification performed by that kind of engineer?

MR DELLEPIANE: No, BA Energy Solutions

12:00

provided an independent, sophisticated, reputable study commissioned for purposes of a very specific question. They're reputable, and they are really completely unchallenged. Your experts could actually have done that. I'm not supposed to do it for them.

And, by the way, when your experts point something out that we actually agreed with, we modified it in our report. This is what this process is about. It's about finding the evidence for the Tribunal to rely on.

So, no, I did not conduct an independent study of the BA ES independent study. I didn't need to. I selected them. I know exactly -- I selected that firm. I know how reputable and good they are at what they do.

MS ENDICOTT: And you had no way of verifying what they put in there because you would have had to be a specialised engineer in order to do so, right?

MR DELLEPIANE: I verified it to the best of my ability, which is by discussing with them their assumptions, the assumptions that we gave them, the ones they came up on their own, the reliance on -- which is -- almost I think

90 per cent of their documents cited are all Peruvian public documents of the functioning of the electricity sector.

There's absolutely no black boxiness in that model as there is with this. Anyone who has that level of skill can actually verify the BA Energy Solutions model.

MS ENDICOTT: And did you document anywhere in your report the assumptions that you discussed with BAES?

MR DELLEPIANE: I think it's clear in their report which ones overlap with ours. There's a couple of macroeconomic assumptions about inflation, US inflation, maybe foreign exchange. The rest, basically their exercise consists of determining, given the grade of the matrix of power producers in Peru from renewable to thermal and into natural gas and into liquid fuels, what would be the supply/demand balance and therefore the merit order in which each of these units would dispatch. In that basis the marginal price of fuels would determine the spot price. That's basically the general principle of dispatch modelling that BAES and anyone else would have followed.

So I understand quite well what they did.

12:02

I understand the data they relied on. In fact, I was involved recently in another arbitration where that was the sole and principal focus involving your same client, and dispatch modellers were brought from the Peru side as well to actually counter and have a discussion between them as to the right assumptions, et cetera.

In that case I should say it wasn't BA Energy Solutions that participated, but anyway, that's as far as I should go on that.

MS ENDICOTT: You mentioned that you felt like the Innergex financial model was a black box, and you would have had to ask Innergex to understand some of those inputs, right?

MR DELLEPIANE: I didn't talk about feeling anything about this. I tell you I observed that this model could not be auditable or traceable.

MS ENDICOTT: And you mentioned that you would have to ask Innergex to get more information to do that, correct?

MR DELLEPIANE: I believe Innergex was asked. I certainly asked Latam Hydro reps, and they I think were unable to get that. I think Innergex itself couldn't actually find -- they said that there was some expiration and these models kind of expired. That's my recollection and understanding, but you should ask Mr Sillen or Mr Jacobson, or maybe counsel, because they're the ones who brokered that relationship. I didn't talk to Innergex myself. **12:04**

MS ENDICOTT: You could have asked Claimants about the process for creating this model, too, right?

MR DELLEPIANE: I believe we did. I believe they were involved and provided a lot of the -- or at least some of the inputs. I'm sure Mr Sillen was involved in this. Pretty sure he was.

MS ENDICOTT: And are you aware that agreement to this financial model was one of the terms --

THE REPORTER: I'm sorry to interrupt. I'm the Spanish court reporter. I would ask you please to slow down because otherwise the interpreter is speaking too fast because you are too fast and I cannot take down what he's saying at that speed.

MS ENDICOTT: I'll ask again.

Agreement to this financial model was one of the terms of Innergex's offer, right?

MR DELLEPIANE: You'd have to remind me and point me to this financial model being what was being sought to be agreed on. I don't know if they were agreeing to this financial model, as you said, or to a financial model.

MS ENDICOTT: Are you aware of any other financial model generated by Innergex and Claimants?

MR DELLEPIANE: You mean an Excel spreadsheet? A financial model can be the terms of the revenues cost and their allocation between the parties. It could be a wonderful chart that simply says how we're going to distribute the earnings when there are any. To say that the language -- that's why I'm asking you. If you can put a document in front of me that says that they're referring to this Excel spreadsheet that we have on the screen or had on the screen, we can talk about it, but I don't -- I've seen some transactions where the parties have agreed to a spreadsheet capturing their intent and expectations but no, I don't think I could say that they were agreeing to -- trying to agree to this financial model or a financial model in this sense. I don't know about that.

MS ENDICOTT: So just to clarify, Mr Dellepiane, you're not aware of any other financial model put together between the parties,

12:07

Innergex and Claimants, right?

MR DELLEPIANE: You mean an Excel spreadsheet? I haven't seen others. You mean a financial model? Each of the offers is a financial model, and I'm not trying to be cute with the language here, I'm really being precise, because the idea of a financial model to be agreed on a deal document and that being an Excel spreadsheet, I worked with deal lawyers for many years, and I can tell you they generally would not approve of an Excel being a prerequisite for a closing.

MS ENDICOTT: You're aware that Mr Jacobson, in his witness statement, refers to this exhibit C-0047 as Innergex's financial model for the Mamacocha Project at footnote 29 of his first statement?

MR DELLEPIANE: I'll take your word. I don't remember Jacobson's witness statement by heart. That's what I've been calling it, the Innergex financial model.

MS ENDICOTT: And Claimants have asserted that they were going to accept Innergex's offer, right?

MR DELLEPIANE: The offer in which they --

MS ENDICOTT: Their 2017 offer. Excuse me. Let me try again for our transcript.

And Claimants have asserted that they were going to accept Innergex's February 2017 offer, right?

MR DELLEPIANE: That's my understanding. They intended to.

MS ENDICOTT: And can you point me to any indication in the record that Claimants objected to this financial model before their scheduled financial close on 15 May 2017?

MR DELLEPIANE: I have no reason to believe that they have objected to it. I believe that at that time they probably had access to it and understood what it did and what it didn't do, something we don't have the luxury of right now. But what I can tell you -- but I will sound like a broken record -- is that the terms of that offer provide for a very, very obvious and clear indication of the implied value for all the equity in the project.

MS ENDICOTT: If we use your 14 March 2017 valuation date and apply the 8 per cent discount rate we see in the Innergex financial model to the cash flow valuation generated, we see that the valuation in accordance with that model is

7.23 million, right? **12:09**

MR DELLEPIANE: Your question was if we use your valuation date, apply the 8 per cent, we see in the Innergex model to the cash flow valuation generated. That's what Versant does in their alleged benchmarking. They take one of the numbers, one of the strips, one of the series of numbers from the Innergex financial model, and they discount it at 8 per cent. Is that what you're referring to?

MS ENDICOTT: Do you disagree that if you take those cash flows in the Innergex model and you apply the 8 per cent discount rate, the value that is generated as of 14 March 2017 is $7.23 million, Mr Dellepiane?

MR DELLEPIANE: No, and that's exactly why the model cannot be relied on, precisely because I don't disagree with that, because if I disagree with that, I would be bringing up a host of other issues. But because I agree with that I know that Innergex can't possibly in their sane mind be looking at the 100 percent value of the equity in the project as $7 million when this equity in their project at that time was going to be 70 per cent and would cost them $18 million to put in literally the year after.

So why in the world would they go in to put $18 million into a project that has only a $7 million NPV for 100 percent of the business? By the way, the $18 million is their commitment. 100 percent their commitment. But the $7 million, according to Versant, is for 100 percent of the equity. So it's even -- 12:11

MS ENDICOTT: I believe, Mr Dellepiane, your answer to my question was no.

PRESIDENT: Can you avoid overlap, please?

MR DELLEPIANE: I apologise.

PRESIDENT: Mr Dellepiane, can you slow down to 50 per cent of your usual speed?

MR ZEBALLOS: Mr President, if I may, I think throughout this proceeding experts have been given -- and witnesses generally have been given a lot of leeway to explain their answers, and I think Mr Dellepiane was still explaining his answer with information that was relevant to the question posed by Ms Endicott, so I would ask that he be allowed to finish his answers while he's giving them.

PRESIDENT: Mr Dellepiane, had you finished your answer?

MR DELLEPIANE: Just very briefly, Mr President. Thank you. Just very briefly to round out the point, it cannot be logical, sensible conclusion to the review, the alleged review of the Innergex -- so-called Innergex financial model to conclude that a model or a set of cash flows that produces a present value at whatever discount rate of $7 million for 100 percent of the project is commensurate, consistent and logical, when that same company needs to deploy almost immediately at least $18 million in capex of their own money. **12:12**

So what that tells you by call it reverse engineering or just logical induction, that it cannot be that that model reflects the thinking of Innergex at that time because if Innergex was thinking at the time that the project's net present value for 100 percent of the equity is $7 million, it wouldn't even be talking to Mr Sillen, Mr Jacobson or to any of this, it wouldn't appear in this record, because they need to commit to $18 million literally a year later or less.

So we need to understand these facts, we need to look at this record intelligently and say what is Innergex thinking here? Well, definitely they're not thinking this thing is worth $7 million because just on their own they're going to put 18.

PRESIDENT: Wait a moment, Mr Dellepiane.

May I ask you a question if, Ms Endicott, if you allow me. **12:14**

The 18 million which could have been provided by way of equity, it could also be provided by way of debt, isn't it?

MR DELLEPIANE: Thank you for your question. The 18 is actually net in equity above and beyond the debt financing.

PRESIDENT: Wait a moment. So the 18 plus the 7 is 25, that would all be equity, and then how much -- what is then the debt to be?

MR DELLEPIANE: Hold on, just to be clear --

THE COURT REPORTER: Mr Dellepiane...

MR DELLEPIANE: Sorry, sorry.

To be clear, the 7 at that time in the early 2017 discussions, the $7 million is not a cash injection by Innergex. At that point they're recognising $7.6 million that Claimants had already put -- as part of what Claimants had already put into the project. What Innergex commits to do as of February/March 2017 is to put an additional $18 million in capex of their own equity.

PRESIDENT: OK.

MR DELLEPIANE: It's the 2018 offers that change the dynamic a little bit, and at that point they want to buy them out and put the $18 million. So one way or the other you always end up with the inference, the logical inference that Innergex is looking at this project and saying it cannot be that it produces one dollar less than about $25 million, because then why bother? **12:15**

PRESIDENT: But help me, was that the situation on 14 March 2017?

MR DELLEPIANE: On 14 March 2017 my understanding was that Innergex was looking to acquire only 70 per cent, so the 18 or so, $17.8 million, when you consider that to be 70 per cent, the 100 percent equivalent of that equates to $26.9 million. $26 million.

So, generally speaking, we're looking at the same ballpark of numbers. It made perfect sense from Innergex's standpoint. All that happens is that Innergex in 2018 changes the structure of the deal and instead of being 70/30 says I'll buy you guys out because I know you're having trouble there and you want out, but that's a different dynamic from 2018. But the underlying numbers are the same and that also makes a lot of sense, Mr President, because it just turns out that those deals in 2018 are contingent upon Peru meeting certain conditions and making their life just as good or reasonable as the but-for scenario that we're considering. So in fact the fact that those numbers coincide with the 2017 numbers makes perfect sense because in both situations the buyer, Innergex or Glenfarne, is looking at the same types of but-for conditions. **12:16**

In our world they're called but-for, in their world they're called guarantees and commitments, or deals contingent upon Peru restoring certain things and so on, we can pull up the offers and take their language, but that's basically -- the idea is that the 2018 offers are contingent upon Peru restoring certain guarantees.

PRESIDENT: Thank you. Ms Endicott, please continue.

MS ENDICOTT: Thank you.

Innergex's analysis in 2017 also included an assessment of the amount spent by Claimants, right, Mr Dellepiane?

MR DELLEPIANE: Innergex's analysis, you said? Sorry, can you repeat the question?

MS ENDICOTT: Innergex's analysis in 2017 also included an assessment of the amount spent by Claimants, right?

MR DELLEPIANE: I assume they analysed it. **12:18**
I don't remember seeing their work papers, but I know that Claimants submitted to them what they had spent on and Innergex said, well, how about we recognise some amount of that as your 30 per cent contribution. So I assume there must have been an analysis. I can't say I've seen a document, if I did I apologise for forgetting what it is, but I don't know that I've seen a document that shows that analysis from the bottom up.

MS ENDICOTT: In fact, at footnote 122 of your First Report, you note that Innergex recognised sunk costs of 7.63 million, right?

MR DELLEPIANE: Yes, that's what I referred to before. What I was clarifying is that I don't know that I've seen their actual analysis. I don't think it's been -- we've been privy to it.

MS ENDICOTT: We see this recognition of 7.63 million in sunk costs in BRG-0041 with the sheet Budget Comparison in cell H16, which I'll ask Mr Alvarez to please put on the screen. Tab Budget Comparison, so different tab.

MR DELLEPIANE: Let me have one moment, please, to reacquaint myself with this document.

MS ENDICOTT: If you could zoom in,

please, Mr Alvarez, at least for me. It's a little hard to see. Thank you. 12:20

Please let me know, Mr Dellepiane, if Mr Cardani is better placed to answer this question.

MR DELLEPIANE: No, I'm just looking for -- I apologise, I really didn't remember that we had seen the source for the 7.63. I do apologise. It's been --

MS ENDICOTT: All right. I would like to ask you a question about this document. This value, the 7.63 million here, is what you refer to as the investment value of Claimants' investment, right?

MR DELLEPIANE: No.

MS ENDICOTT: I'll take you again to footnote 122 at paragraph 61 of BRG-1. Mr Alvarez, to make it easier on Mr Dellepiane, if you could highlight the sentence that starts "In particular" which is about midway through the paragraph in the footnote.

MR DELLEPIANE: I see --

MS ENDICOTT: Excuse me, excuse me. Could you read for me the sentence that begins "In particular" and then just stop at the end of the sentence?

MR DELLEPIANE: "In particular Innergex recognised USD 7.63 million in Claimants' 'investment value'." **12:22**

MS ENDICOTT: Thank you.

MR DELLEPIANE: That's precisely what I was trying to clarify, is that this was not our calculation of investment value which, you know, we've been referring to this morning. This is the equivalent in the Innergex speak. Sorry if I was unclear about that.

MS ENDICOTT: This is the investment value that Innergex was recognising in connection with its February 2017 offer, correct?

MR DELLEPIANE: Correct.

MS ENDICOTT: So I'd like to take a moment to just add some of these values we've been talking about through our demonstrative, so if the Tribunal will permit me a moment -- on our time, of course -- and just pull that up.

So, Mr Dellepiane, I believe you testified earlier that the investment value recognised by Innergex was 7.63 million. Do you see that there?

MR DELLEPIANE: Yes.

MS ENDICOTT: OK.

MR DELLEPIANE: I see it in a highly distorted graph that begins at 7. Something we are always loath to do is start graphs -- it would look even closer if you started at zero, so please go ahead, just with that note. **12:24**

MS ENDICOTT: Sure. Now, you know that any comparison -- and I'll take that down for the time being. Also, just as a procedural matter, Mr President, I'm going to move on to my next set of questions, but I note that we're also very close to the scheduled time for lunch. I do intend to continue with Messrs Cardani and Dellepiane after lunch, given all the time we have in the schedule, so would you prefer that we break now or we continue?

PRESIDENT: How many more minutes do you estimate your cross to last?

MS ENDICOTT: I'm loath to say this, Mr President, but it really depends on the length of the answers that I receive from those under cross-examination. I certainly believe that I can finish within the day.

PRESIDENT: What do you mean by within the day?

MS ENDICOTT: Our allocated time for the day.

PRESIDENT: Within the 90 minutes?

MS ENDICOTT: Yes. **12:25**

PRESIDENT: Let's ask Ana, how many minutes has been spent on cross?

MS CONOVER: So far the Respondent has used about 1 hour in 48 minutes in cross-examination.

PRESIDENT: There's still 50 minutes to go, I understand? How many minutes are left on the estimate?

MS CONOVER: About 42 minutes to go.

PRESIDENT: Ms Endicott, could you be mindful of the estimate? I know estimates are estimates but could you have another look at your questions?

MS ENDICOTT: Yes. I will certainly be mindful of my questions but, again, I can't make any promises about the answers.

PRESIDENT: I understand. We all have to work towards getting an efficient hearing. 45 minutes of break --

MR ZEBALLOS: Mr President, before we break, may I ask a question on a point of order? Of course with no intent whatsoever to rush Ms Endicott, I believe that our redirect will be very brief, and to the extent that Respondents would be prepared to go forward, we would be happy to go forward, and we are prepared to go forward with Versant in the afternoon if that's in the interests of the Tribunal and, again, and Respondents for the sake of efficiency. If not, we understand, and we're also perfectly happy to proceed with the schedule. But we are prepared to move forward like that if that's an option. **12:26**

PRESIDENT: Thank you for your indication, Mr Zeballos, but I think Ms Endicott is still -- you want to use your 40 minutes or so, Ms Endicott?

MS ENDICOTT: Yes, I intend to continue after lunch and, as I said, I'll try to stay within my limit, but I don't think it would be appropriate in light of the schedule to push Versant up unnecessarily today.

PRESIDENT: No, we don't want to push it. Don't worry. So take first your time to have lunch, and then we meet again at 18.10 CET.

MS ENDICOTT: Thank you.

MR ZEBALLOS: Thank you, Mr President.

(Luncheon adjournment from 12.27 EST to 13.11 EST)

PRESIDENT: You're all set, Mr Dellepiane and Mr Cardani?

MR DELLEPIANE: Yes.

PRESIDENT: Ms Endicott, please continue. **13:11**

MR DELLEPIANE: Thank you, Mr President.

MS ENDICOTT: Hello, Mr Dellepiane, and Mr Cardani. Hope you got some lunch.

MR DELLEPIANE: We were fed, thank you, yes.

MS ENDICOTT: So, Mr Dellepiane, you note that in looking at the 2017 offer from Innergex, any comparison of the value of Claimants' shares implied by Innergex's February 2017 offer between -- excuse me. You know that any comparison of the value of Claimants' shares implied by Innergex's February 2017 offer to the value of those shares derived from a DCF analysis "must assume that the Innergex offer would have been executed", right?

MR DELLEPIANE: The comparison of the valuation assigned by Innergex is relevant to the point where, if one understands that transaction, that offer, to be a bona fide, real document, a real offer, they can proceed. That's what I mean by that.

MS ENDICOTT: Let me just -- maybe to help keep your answers a little shorter I'll just take you to the language in the report. That's BRG-2, pdf page 69, paragraph 145, if you could, Mr Alvarez, please. And just to confirm that you state: "Any analysis attempting to utilise -- any analysis attempting to utilise the Innergex offer as a comparison to a DCF analysis must assume that the Innergex offer would have been executed". **13:13**

Thank you, Mr Alvarez.

The terms of the offer contemplated that Innergex would invest 17.08 million in cash in the project in exchange for the issuance of new shares, right?

MR DELLEPIANE: Sorry, did you say point 08? I think it's 17.8, isn't it? Do I have the number wrong? It's probably not material to your question, but just to clarify. 17.8 I think is my understanding of the number.

MS ENDICOTT: So let me just ask again with that clarification. For the record, the terms of that offer contemplated that Innergex would invest 17.8 million in the project in exchange for issuance of new shares, right?

MR DELLEPIANE: OK.

MS ENDICOTT: The issuance of those additional shares would give Innergex a 70 per cent stake in the company, right?

MR DELLEPIANE: That's right.

MS ENDICOTT: This offer didn't include Innergex paying Claimants for the existing shares, right? **13:14**

MR DELLEPIANE: No, the offer is recognising Claimants' investment and then committing to an additional investment. That's how we know and how we get inferred value of the asset from that proposed transaction.

MS ENDICOTT: So if the offer went through, as you say we must assume, Claimants' existing shares end up getting diluted from 100 percent ownership of the company to just 30 per cent ownership in the company, right?

MR DELLEPIANE: The latter part of what you say is correct. The premise of your question is, just to clarify, completely irrelevant, right, because the issue of assuming that the transaction goes through is the comment that we made in the report -- pardon me -- in response to something Versant says about what happens before and after the transaction, when in reality the information contained in the transaction, in the offer, is the underlying value of the asset, which is exactly what Versant and us set out to do in theory. We both set out to do the same thing, which is to determine the underlying value of this business given by the RER Contract, the studies conducted to date, the possibilities of everything that we'll do in the future. **13:15**

So if we're actually both trying to do that, and we certainly are, and we're trying to determine that fair market value on the basis of the underlying business, then what we glean from Innergex transaction is that --

MS ENDICOTT: Mr Dellepiane, I must ask you to keep your answers to my questions. Your counsel already said he'll do redirect and you'll have the time to give these long explanations that you want to give.

But my question was not about what you and Versant are agreeing on or how you interpret the intrinsic value of the offer. It was much simpler. And if you've forgotten it, I'm happy to repeat it.

MR DELLEPIANE: I didn't --

MR ZEBALLOS: Mr Dellepiane, hold on one second.

Mr President, again, throughout this proceeding provided that the response -- the explanation is relevant to the question, and I understand that the added response must be relevant to the question, I have no dispute with Ms Endicott about that, but witnesses have been given broad leeway to explain their answers in this proceeding, and I would ask that if there's going to be an objection to the answer, that the objection be properly posed but that otherwise, Mr Dellepiane and Mr Cardani be allowed to finish their answer without interruption.

PRESIDENT: I must say that Mr Dellepiane is pretty long with his answers and I think they can be reduced to the essence, and I would like to invite Mr Dellepiane to be economical in his answers.

MR DELLEPIANE: Thank you, Mr President. I will do my best. Let me just explain that the question that was put to me was not whether Latam Hydro would be diluted from 100 percent to 30 per cent. The question that was put to me was if we assume that the offer went through, we must assume dot, dot, dot, and then the question came.

So the way the question was put to me, in fairness to precision of language, I must answer it with some length because it's just not a question that requires a yes or no answer. And I apologise for being long but I'm trying to be very clear with this Tribunal that the assumption of the transaction going through or not going through is absolutely irrelevant to the purpose of determining inferring value from the terms of the offer, and I was just explaining why. **13:18**

I will stop there, and if you have any questions about that that are unclear from my presentation today, I can expand on that, but that's what I was trying to clarify. Thank you.

MS ENDICOTT: Mr Dellepiane, to remind you, it's the language in your report that says, and I will read it again for you: "Any analysis attempting to utilise the Innergex offer as a comparison to a DCF analysis must assume that the Innergex offer would have been executed", BRG-2, pdf page 69, paragraph 145.

If we assume, as you say we must, that the offer goes through then Claimants' existing shares would be diluted from 100 percent to just 30 per cent ownership of the company, right?

MR DELLEPIANE: To make that conclusion we don't need to assume that, but the answer is yes.

MS ENDICOTT: And you assert that the terms of the offer imply that assuming Innergex made a $17.8 million investment, the value of the company would be around $25 million, right? **13:19**

MR DELLEPIANE: The $25 million implied value can be derived from two different ways. One, by looking at the recognition of what 30 per cent buys you, or in other words what $7.63 million would have bought Claimants would have been 30 per cent. So you don't need the 17.8 -- I'm answering your question -- you don't need the 17.8 to take an inferred value from the Innergex transaction. It just so happens that this transaction was designed in a way that recognised, pari passu so to speak, the 7.63 and the 17.8 in a manner that was 30/70. It's not a coincidence obviously but it happens to -- it is again not a coincidence. It adds up perfectly that you can look at this transaction from the point of view of 30 per cent that is recognised and how much that was priced at, or the 17.8 that bought the 70 per cent and how much that was priced at. They're priced obviously in a consistent manner because we're looking at the same transaction. So you can look at it both ways, through the lens of the 17.8, or the other.

MS ENDICOTT: So let's look at it through the lens that you have said we must assume which is that Innergex does make its 17.8 million investment.

In your view, then, the value of the company would be $25 million assuming that's executed, right? **13:21**

MR DELLEPIANE: No, in my view the value of the company is independent -- the fair market value is independent of a transaction happening or not, as we explained this morning. The Innergex deal details need to be understood under the light of that transaction, assuming they close. It's standard language. But the inference from the deal details are independent on that happening or not, as I just explained.

MS ENDICOTT: But you have agreed, Mr Dellepiane, that after the transaction is executed, the Claimants' share of that value is 30 per cent. 30 per cent of 25 million is around 7.6 million, right?

MR DELLEPIANE: 7.63, and that's actually not what we're quantifying. We're here quantifying as of the date of valuation the value of Claimants' share in the project, which was 100 percent, and we're not worrying about the identity of the holder of that right at that particular time, or interested with the underlying value of the -- or the value of the underlying asset, as I explained today.

MS ENDICOTT: So you want to assess the value of the project as of March 14, 2017, am I understanding you, right? 13:22

MR DELLEPIANE: Yes.

MS ENDICOTT: Innergex and Claimants had not executed the transaction by 14 March 2017, right?

MR DELLEPIANE: Correct.

MS ENDICOTT: In fact, Claimant was still gathering documentation for Innergex's credit approval at that time, right?

MR DELLEPIANE: I believe that's correct, and that doesn't prevent anyone from actually understanding that underlying value of that asset because it's not dependent on the identity of the holder, and it's not dependent on anything that happens on the day-by-day particularly, but rather on the cash flows it can produce in the future. So that --

MS ENDICOTT: There is nothing in the record that suggests that the impugned measures prevented the offer from materialising before March 14, 2017, is there?

MR DELLEPIANE: That's a matter of fact and law. What exactly and in what way exactly the transaction or the date of valuation anchors our assessment is a question for counsel. **13:23**

MS ENDICOTT: In fact, Claimants assert that in the absence of the impugned measures, the deal with Innergex would have been finalised by May 2017, right?

MR DELLEPIANE: You say "in fact". I understand that contradicts what you said before. I'm trying to follow here. Can you repeat the question or perhaps rephrase it?

MS ENDICOTT: Claimants assert that in the absence of the measures that were impugned, the deal with Innergex would have been finalised by at least May 2017, right?

MR DELLEPIANE: I think they say that. It's again, like I said this morning, neutral and irrelevant to our evaluation, but I think that's correct.

MS ENDICOTT: So in the counterfactual scenario Claimants have received a term sheet, they are on track to complete their due diligence by May 2017, but Innergex hasn't executed the offer by March 2017, right?

MR DELLEPIANE: No. The counterfactual scenario that is the basis for a cash flow analysis is neutral and agnostic to any of these facts.

MS ENDICOTT: This means that, by March 14, 2017, Claimants have not received the 17.8 million cash injection from Innergex or the one -- excuse me. **13:25**

This means that Claimants have not received by that date, March 14, 2017, the 17.8 million cash investment from Innergex or the $1.5 million development fee, right?

MR DELLEPIANE: When you say "this means", what do you mean?

MS ENDICOTT: I'll take you back. In the counterfactual scenario, which means when there are none of the impugned measures -- in fact, they haven't even happened yet -- Claimants have a term sheet, they are on track to complete due diligence by May 2017, but Innergex hasn't executed the offer by March 14, 2017, right?

MR DELLEPIANE: Yes, and all of that doesn't build up or is relevant to our fair market value assessment.

MS ENDICOTT: That's not what I'm asking you.

The fact that Innergex has not executed the offer by March 14, 2017 means that the Claimants have not received the $17.8 million cash investment from Innergex or the $1.5 million development fee as of March 14, 2017, right? 13:26

MR DELLEPIANE: Of course not.

MS ENDICOTT: Now, you criticise Shopp & Sequeira for suggesting that the value of the Mamacocha Project before Innergex invested would be different than the value after Innergex invested, right?

MR DELLEPIANE: Absolutely. They're absolutely wrong about this and --

MS ENDICOTT: In fact --

MR DELLEPIANE: No, hold on, hold on. Do I get a short, brief snippet? It's really difficult if I'm interrupted, to be honest.

MS ENDICOTT: I suppose that's up to the Tribunal but I would say no, you've answered my question; now I would like to ask you another one.

PRESIDENT: Please, Ms Endicott, let the expert witness finish his answer. Mr Dellepiane?

MR DELLEPIANE: Yes, I'm re-reading the question. Yes, we do criticise Versant for saying that the value of the asset that is at stake here, the Mamacocha Project, would be different under different ownership. We think that's a violation of the fair market value standard completely and that's just the beginning of it, but I'll stop there. **13:27**

PRESIDENT: May I ask a question here, Ms Endicott?

So if you can help me, so on 14 March 2017 the Claimants have invested something like 7.3 or 7.4 million?

MR DELLEPIANE: At that point they've invested about 12 million.

PRESIDENT: 12 million, OK.

MR DELLEPIANE: Almost 8 of which is recognised, so to speak, in this deal that is going on.

PRESIDENT: So the value of that investment is to be based on what, according to you? If it would have been taken away, the investment, let's assume that for a second, how do you value then that -- because that's a 100 percent shareholding basically. You have capitalised the 12 million, if I understand it correctly.

So how do you value? Because if I follow your reasoning, that you have to value it as a whole enterprise, then somebody who buys it at that time, the third-party bystander, how much would he or she pay for it?

MR DELLEPIANE: Well, we know exactly how much he or she would pay for it because we know how much in cash flows the asset can produce, right? We test that through the cash flow model. **13:28**

PRESIDENT: I --

MR DELLEPIANE: I'm getting there.

PRESIDENT: We have been over that. But that supposes that the remainder investment, the money that you need for the remainder of the investment, should come from somewhere, so if you do it in your modelling as a debt, so you have debt leverage, so then you have the 17 to 30 per cent debt leverage, if I can do that, then you have to take into account for your whole model for the debt and the servicing of the debt.

MR DELLEPIANE: Correct.

PRESIDENT: So then you get a different model. But if you do it by the way of a capital injection, somebody else is going to participate, then in the remainder -- of course in the remainder of the period the investor has only 30 per cent left, so it may well be that you can value that whole enterprise at a certain point at a hundred but the investor will only get 30 back, isn't it?

MR DELLEPIANE: Well, there's two parts to your -- answers to your question. It's a two-part

13:30

answer. On the one hand I believe and it's been my understanding in most of these cases that I work on, these types of expropriation cases and so on, that the fair market value standard should apply independently of the identity of the holder at the time, not independently of things such as a debt financing but the equity that is held by the party that has rights to that asset should actually be entitled to an equity.

I think what you're asking is what if that party happens to be reliant on a third party, is he or she supposed to share those proceeds or not or obtain those proceeds or not.

And in this case what my colleague tried to explain this morning in cross-examination was that actually there is evidence of both the ability and intent of Claimants to actually fund this purchase themselves. So, to me, you can look at this from two different angles. One is well, it shouldn't matter because what's been taken is 100 percent of the equity, not 30 per cent of the equity, and, second of all, even if you're concerned with an issue about how they would have potentially funded this, whether Innergex would have closed in time, not closed in time, that should be irrelevant because of the fair market value standard but also 13:31 because the Claimant committed to telling I believe DEG that they would actually fund this themselves if that was what was needed.

PRESIDENT: OK. But then you talk about a funding itself either via equity or via debt. At that point in time on 14 March 2017, this had not happened yet, so basically we're adding something hypothetical, isn't it?

MR DELLEPIANE: Oh, no, we are understanding this to be a situation in which we need to value this independently of who the Claimant is or what the Claimants exactly want to do with this asset because they hold rights to 100 percent of it, and at that time what we know is that the entities taking a look at this asset all agree Innergex, then Glenfarne in 2018, Innergex again in 2018, our analysis as well for what it's worth -- we all agree that this asset would produce cash flows of no less than $25 million -- which means that that equity value -- again, net of a debt to be repaid -- that equity value is what matters. It's not the capital assistance that has been made up until that point that matters.

PRESIDENT: Let me ask you a question. So on 14 March 2017 would then a third party, informed third party, purchase that asset for the full 100 percent, as you say, in your calculation 45 million? **13:32**

MR DELLEPIANE: No, it would purchase it for 25 million. The 45 includes interest and other ancillary damages that happened as a result of the dispute, so we're talking about $25 million. And the $25 million absolutely, yes, a third party would buy it for that amount. We know that because, in fact, in the following year the offers added up to an amount. These offers were --

PRESIDENT: It's not the offer. It's that one part you pay the investor, and the other part is to be funded by the offeror himself.

MR DELLEPIANE: Well, but that's exactly what the investor was going to do, right? The $17 million is a negative in the discounted cash flow model, so you cannot actually deduct it twice. The investor going in, whether it's a new one or an old one, would go in and have to capitalise the company with those $18 million. That is already being deducted in the DCF model.

If you actually assume that the value of the asset is 25, which already has deducted the 18, and then you deduct another 18 from the 25, that is not the value of the asset. That is actually the value of the asset at twice the capex. **13:33**

PRESIDENT: Let me be clear. You say, OK, the intention of the investor is to fund one way or the other, either capital contribution or by debt, the remainder, what is necessary to complete the asset. The same would happen, isn't it, if the buyer comes there on 17 March 2017 and says, OK, I see that you have to spend more money on this, I will do that, but I pay you out now. So how much is that? Is that then still the 100 percent that he would spend then in the future, or is that simply the amount he has at that point in time?

MR DELLEPIANE: It would be -- the amount that they are willing to pay would have to be commensurate with them still making a return, and what we see in the evidence is that if they pay $25 million, they're willing to pay $25 million to participate in this project. That means that they believe that the interested value or the value they can derive is even higher. So by -- and this is all net of debt. You mentioned debt several times. In all cases we're talking about the debt already being taken care of separately.

PRESIDENT: So on 14 March 2017 somebody comes along says, OK, I'm prepared to pay 25 million. Would the entire 25 million go to the Claimants, or is it the part Claimants had already invested and what the Claimant had intended to add in the next year or so, then says I assume that for myself as part of my 25 million. So to take for example he says well, 7 million you have spent, that is what I think, and the rest I will pay later by my own financial. But that's the buyer who does that, isn't it? **13:35**

MR DELLEPIANE: They construct the transaction in infinite different ways, but what we know is that the seller -- and this is important about the fair market value paradigm -- the seller wouldn't accept $1 less than the 25 or more that it can make by staying in the project and funding it itself, so the problem with this idea that a buyer can hold a gun to the other guy's head and say well, how much do you really need for me to buy this thing, that's a problem because it doesn't consider that the seller is a sophisticated party which can self-fund this, can calculate the cash flows and say I'm not going to sell for less than 25.

PRESIDENT: I see that but then if they say, look, I want to stay on it, then you say, OK, you pay me my share -- which exactly was one of the proposals, that they take 30 per cent and you take 70 per cent. But if he says no, if we have to value the damage done on 14 March 2017, then one way or the other it is 30 per cent, isn't it? **13:36**

MR DELLEPIANE: No. The damage then to the Claimant as of March 2017 is for 100 percent because that's what they owned at that date, and what they were committing to develop and what is modelled in our --

PRESIDENT: Sorry, I expressed myself badly.

I mean in monetary terms it's not the 25 million.

MR DELLEPIANE: Why not, sir?

PRESIDENT: Because he has not yet spent 25 million on the project.

MR DELLEPIANE: Well, that's the issue with value, sir, is that it's not backward-looking. The value of a business depends on the cash that it can generate forward.

This project could have actually -- in all honesty they could have spent a hundred million dollars digging the mountains of Peru like Swiss

13:37

cheese, and that would not be relevant. What is relevant is what can this asset produce in terms of revenues minus cost in the future. That is the valuation part that both Versant and us agree with. We shouldn't depart from that because otherwise we are just opening up to say that the value of this should be determined based on historical calculation which is not what either Versant or us do.

PRESIDENT: Assume he had only spent 1 million. Would he still be entitled to 25?

MR DELLEPIANE: If that's what these cash flows can produce, absolutely. But probably at that point, if he had only spent 1 million, he wouldn't have feasibility studies, he wouldn't have hydrology studies, he wouldn't have the permitting, he wouldn't have a lot of things that would make this project more advanced in the spectrum between an idea, greenfield, and advanced greenfield preconstruction/construction and operational project, so the investments made get these projects in more advancement, as you see in mining cases, for example, towards advancement and operation. That's what it really was.

In four years once the construction is done and the project is pumping water through the tunnel and it's generating electricity and the project value and the capex has been spent, the project value would be much, much higher. But that isn't dependent on the historical investment. It's not unrelated but it's not the amount of the historical investment that determines that value.

PRESIDENT: OK. I think -- I had difficulties but I understand the valuation approach. I can see that. And how you have to evaluate it. But at that point in time it was not yet complete, this project. That's my problem.

MR DELLEPIANE: Yes. And that is accounted for in several ways. Very high interest rates --

THE REPORTER: A little bit slower, please, please.

MR DELLEPIANE: Sorry. It's accounted for in several ways. There's all the capex that needs to be spent is being deducted from the value. $25 million of net present value is after deducting all the capex, all the capex contingencies, all the time delays, all the operating costs, all of that is being deducted, being removed. So we're not actually valuing this project as if it was in operation. And we know that because we are the ones

13:39
actually putting in these contingencies in the model.

We also know that we're actually loading up this project with very high rate of interest, as was pointed out today, and finally we know this because in 2018, when Innergex and Glenfarne come back and say well, you seem to be having trouble, how about we just take this over, what they say is well, a project like this, I'll pay you 8 and I'll have to put in another 18 and I still need to make money.

What does that mean, Professor van den Berg? What it means is that the buyer of the greenfield project in the status it was in 2018, or 2017, would recognise exactly what you're pointing out, that there's more value to be derived, and they won't pay the full amount of that value because if they do, there's no money to be made. If I think I'm going to buy a house for a hundred and I'm going to sell it for a hundred in five years, it's not a good business if I'm going to live in it.

But these buyers understood their business and they said 25 is what I'm willing to put, even though I have to run a business and make money and make returns on top of that 25. That's why we refer to this as a valuation that already considers and accounts for the status, the greenfield status, or the advanced greenfield and preconstruction status. 13:41

PRESIDENT: Thank you. Ms Endicott, please continue.

MS ENDICOTT: Just a second here.

Mr Dellepiane, like Innergex you also calculate an investment value for the project, right?

MR DELLEPIANE: Yes.

MS ENDICOTT: And do let me know if these questions should go to Mr Cardani since he presented on this calculation, but the investment value is also sometimes referred to as sunk costs, right?

MR DELLEPIANE: Yes. My colleague will address this.

MS ENDICOTT: Mr Cardani, the idea behind this value is that it looks at the costs spent and assumes that those costs contributed to the value of the project, right?

MR CARDANI: Well, I just would like to clarify that it's not defined as a sunk cost analysis. What we do in the investment value analysis is what we explained this morning. We look at the capital cost and capital investment and then recognise a return on those investments commensurate with the return that the project that was terminated because of the Respondent's measure would have returned to that investor who put all those moneys, which by the way, just for the clarity of record, was $24 million. **13:42**

MS ENDICOTT: OK. So my question was the idea behind this investment value is that it looks at the costs spent and assumes that those costs contributed value to the project, right?

MR CARDANI: As long as you don't use that word "sunk cost", yes, this was investment for the development of the project, correct.

MS ENDICOTT: And Professor -- well, that's OK.

You calculate the sunk costs of the costs spent as around 19.09 million in BRG-81, right? And maybe Mr Alvarez, could you pull up BRG-0081 and then if you don't mind going to the control panel sheet, which I believe is the default open, and then we see there in row 11 "Total investment value 19.09", right? Are you with me, Mr Cardani?

MR CARDANI: Yes, yes, I'm with you.

MS ENDICOTT: And you mention that Mr Sillen, in reality, found out that some of the

13:44
company's costs were slightly higher earlier today, is that right?

MR CARDANI: I think Mr Sillen made a few adjustments, a few reconciliations, in preparation for his second witness statement because of issues raised by Versant which are effectively factual matters, so this amount here that you see in row 9, column F, of $20.1 million reflects the total amount invested in the project.

Then there are some adjustments, and the total investment value is 19.09.

MS ENDICOTT: And did you include any data from Mr Sillen showing the work he went through to reconcile those additional expenses?

MR CARDANI: Well, I think that the very source of this is accounting record produced by Mr Sillen, so all we did was to take these facts and accounted them into the termination of the total investment.

MS ENDICOTT: The costs in the total are not limited to costs spent by the Claimants, right?

MR CARDANI: I believe so. These are all costs or investments -- let's call them investments, not cost. These are capital investments to develop the Mamacocha Project incurred for the Mamacocha

Project. The table is called "Investment value of Mamacocha Project". It includes investment amounts for the Mamacocha Project. That's what the exhibit says, and that's what it is. **13:46**

MS ENDICOTT: Do you consider legal fees investment amounts that went to further the development of the Mamacocha Project?

MR CARDANI: OK, let me clarify that point for you.

There were -- well, certain legal fees I understand certainly can be considered part of the development of a project, right? You need attorneys to get certain, you know, permits and so on and so forth as a regular course of business.

There were also ongoing legal expenses due to ongoing issues related to the measures at issue in this case that were incurred by the Mamacocha Project and were unexpected. Therefore, for this very reason they must be included into a total assessment on the investment value for developing the Mamacocha Project.

The Mamacocha Project effectively incurred additional costs, legal costs due to the very measures, so when calculating damages due to those specific measures those costs must be taken into

account. That was what goes into this calculation. **13:47**
It's only a portion of costs. Only a small portion.

MS ENDICOTT: The expenses totalled here, they include expenses for seven different investment vehicles in addition to the named Claimants, right?

MR CARDANI: Where do you see that? Can you please tell me where?

MS ENDICOTT: Yes, like Greinvest Latin America -- you put the spreadsheet together. I assume you know. Maybe we can click over but, for example, Greinvest Americas LLC included expenses there, right?

MR DELLEPIANE: There were different entities that were part of the legal structure that developed the project, but I think this is a matter of legal and factual matters, so I don't know if I would be able to respond to any question as to --

MS ENDICOTT: My question --

MR CARDANI: -- with respect to the correspondence of those entities with respect to Claimants. I understand that these were all amounts of money invested by companies related to Latam Hydro into the Mamacocha Project. That's probably as far as I can go.

MS ENDICOTT: Now, these kinds of

13:49

expenditures are sometimes considered by a potential buyer, right? We saw that with Innergex.

MR CARDANI: Sometimes considered by a potential buyer. Well, I don't know if I would use the characterising as "sometimes" is appropriate. I think potential buyer makes their consideration about how much a project can generate, OK? That's the key aspect of calculating company values and making investment in corporations.

MS ENDICOTT: And in a typical --

MR CARDANI: I'm not sure what "sometimes" considered by potential buyer to -- would mean in the context of this.

MS ENDICOTT: Sure. So, put differently, you would agree that in assessing the value of a company, a potential buyer may sometimes look at the investment into the development of the company made by the current owner, right?

MR CARDANI: I think it's a very broad and general statement. I think what a buyer looks at is the value generating ability of a project like the Mamacocha Project that was an RER Contract in place with sovereign guarantees with the government of Peru to generate over $220 million in future cash flows undiscounted. That's what they would look at.

Then of course they would look at what is less potentially to develop or finish constructing that project, right? They would take into account the development stage of the project. That's how -- that's how a valuation is performed by an investor. **13:50**

MS ENDICOTT: Let's take a look at one of those potential buyers, who was EnfraGen, a subsidiary of Glenfarne, and their November 29, 2018 offer is in the record as Versant Partners exhibit 48. If I could ask Mr Alvarez to please go to page 3 of the pdf and scroll down a bit, please. A little further, please. OK. Let me see if I can make this easier. If you'd go down just a bit more. Thanks.

So we can see here at item 6 that the valuation assumptions are based on financial information provided by Latam Hydro, right?

MR DELLEPIANE: Yes, I'm going to pick up now. Yes, I see that.

MS ENDICOTT: OK. Great. And we see also that development expenses required to reach financial close, those would be borne by the seller, so here we can see that they're looking at the development expenses or investments necessary, right?

MR DELLEPIANE: Sorry, I'm having trouble with Windows here. One second. OK. Can you go again, please? Sorry about that. **13:52**

MS ENDICOTT: Just the basic point that here at item 3 they're also discussing development expenses required to reach financial close, so that again is a reference to funds that may be invested, right?

MR DELLEPIANE: Well, it's a reference to the ongoing operation and who funds it until the transaction takes place.

MS ENDICOTT: But this potential buyer is also noting that the figures provided by Latam Hydro have not been independently verified by third-party advisers and the proposed valuation is subject to change as a result of those findings. Do you see that there under "Pending due diligence"?

MR DELLEPIANE: Sure.

MS ENDICOTT: So in general these types of investment costs, these development costs, are the kinds that would be verified by a third-party adviser when considered in a transaction, right?

MR DELLEPIANE: I think they are referring to the forward-looking figures. If you scroll down you will see that -- if you can scroll down a little bit. You don't want to scroll down? I'll read it to you. **13:54**

MS ENDICOTT: I'm not in control of the screen.

MR DELLEPIANE: Point 7, "Projected O&M, SG&A and major maintenance capex requirements in the materials provided by Latam Hydro are sufficient for normal operations". In other words, these are the kinds of things the buyer wants to know, is what is the projected cash flows, revenues and costs, both of them, and investments needed to be made.

At that point the expenses made to date are not particularly relevant to the buyer. The buyer is buying an asset they plan to operate. That is the real bread and butter of what they're buying. They're not buying easements, they're not buying feasibility studies alone, they're buying an asset they plan to operate, so they want to know what's it going to cost to operate this asset.

And Latam Hydro has provided figures according to this which they have not completed due diligence on.

MS ENDICOTT: I see you've picked up this line of questions, Mr Dellepiane, so I'd like to take you also then just for the sake of completeness to the Innergex Letter of Intent, which is exhibit BRG-0042. If we can scroll down to page 5 of the pdf to item 5, "Development fees and development premiums". **13:55**

And we can see there that Innergex is going to review documentation and invoices supporting LHL's past development costs and, subject to confirmatory due diligence, as to the legitimacy of such costs Innergex will recognise such development fees as part of LHL capital contribution.

So again we see here due diligence to determine the legitimacy of costs from the financial statements provided, right?

MR DELLEPIANE: Well, in this case because this transaction was premised on some amount of the transaction being premised on reimbursement of certain costs to date -- or not reimbursement, pardon me, recognition of percentage ownership in relation to cost to date. So this transaction was structured a little differently.

MS ENDICOTT: I think you noted in your opening and your remarks just a moment ago, Mr Dellepiane, that Innergex in fact only recognised 7.63 million of what you said was around 12 million in costs, right? **13:56**

MR DELLEPIANE: Approximately.

MS ENDICOTT: At paragraph 31A of your Second Report you maintain that the use of Claimants' accounting records are a reliable source of information for the investment values you calculated, right?

MR DELLEPIANE: I'm looking for that specific wording. I think I would agree with that being a true statement. I don't find the exact wording, but I think that's fine. I agree that the Claimants' accounting records are sufficiently reliable but I also defer to my colleague's prior point, that as a matter of factual record, we are not the ones who audited those numbers. It seems like our colleagues from Versant had submissions and Mr Sillen responded to that in great detail.

MS ENDICOTT: The accounting records are on the record as exhibit C-265, right?

MR DELLEPIANE: Let's take a look. This is the 1,400 page tax returns and many other invoices and so on. Is that what you're referring to?

MS ENDICOTT: Is that exhibit C-265?

MR DELLEPIANE: Yes.

MS ENDICOTT: Have you reviewed all of that information? **13:58**

MR DELLEPIANE: We've taken a look, but it was not in our purview to audit or verify each of those costs. As I said, it's a matter of factual evidence whether those costs are appropriately conducted for the Mamacocha Project. We have no reason to distrust this. These set of costs as laid out were actually spent towards the development of the project.

MS ENDICOTT: To be clear, Mr Dellepiane, when you say it was not in your purview, you mean Claimants asked you not to undertake that exercise?

MR DELLEPIANE: No, that's not what I said.

MS ENDICOTT: OK. So what do you mean by it was not in your purview? You just decided not to?

MR DELLEPIANE: Well, as I said before, this is a matter of fact; it's not a matter of economics. We did not conduct a valuation and a detailed analysis of this because we're not the people who can actually go back and say let's see, who is -- let's pick one of these. Who else -- I don't know, I've got to find, you know, an invoice from a photocopy shop in Lima. The lawyers really meant to charge that to the Latam Hydro account or to some other client? We did not conduct that analysis of that granularity. That's what I'm pointing out. It's a matter of fact, not matter of expert evidence. **13:59**

MS ENDICOTT: Your model includes about $5 million of costs from Greinvest Americas LLC, right?

MR DELLEPIANE: It's possible.

MS ENDICOTT: But there are no financial statements for Greinvest Americas LLC for the years 2015 to 2021 contained in exhibit C-265, are there?

MR DELLEPIANE: I couldn't tell you off the top of my head.

MS ENDICOTT: And I understand that for CHM there were audited financial statements included but just for the years 2013 to 2017, right?

MR DELLEPIANE: I once again cannot tell you off the top of my head. I can point you to Mr Sillen's very detailed reconciliation exercise, which remains unchallenged by now.

MS ENDICOTT: But you include expenses for CHM through 2020 despite the absence of audited financial statements, right?

MR DELLEPIANE: We have been very transparent. We include everything that you are listing, everything that is on the spreadsheet BRG-81, and we provided what we know to be a source and what we don't know to be a source. Like I said before, Mr Sillen is the one who can actually answer these questions. He is the one who presented this evidence, this testimony, and he should be asked these questions. **14:01**

MR ZEBALLOS: Mr President, I'm going to object -- I'm going to object because Mr Sillen's testimony is that audited financial statements were produced. Mr Sillen was on the witness stand. He was not cross-examined on any of these issues, even though respondents had every opportunity to do so, and they're putting questions about factual record to our expert witnesses, which is entirely unfair.

In addition, the issue of receipts was resolved in PO3, annexe B, item number 8, where the parties disputed as to whether receipts and that element of back-up was required to be produced in this proceeding, and the Tribunal ruled in Claimants' favour that there was no need for it to be produced, and the summary reports that were produced included would suffice.

14:02

But, in addition, the statement that audited financial statements have not been produced is incorrect.

MS ENDICOTT: May I respond briefly?

PRESIDENT: Yes, Ms Endicott, please.

MS ENDICOTT: My statement wasn't a global statement that no audited financial statements have been produced, it was limited to certain entities, and I invite you to review the transcript, Mr Zeballos.

Also, the experts here who are testifying testified that they relied on C-265 and they found that information reliable. Now, if it's their expert opinion that the information contained in those records is reliable, I think it is well within the scope of cross-examination to ask them about the basis for that expert conclusion, but I'm happy to move on.

PRESIDENT: Ms Endicott, please move on.

MS ENDICOTT: So, Mr Cardani and Mr Dellepiane, you apply an update rate to these values that you claim were invested, right?

MR DELLEPIANE: Yes.

MS ENDICOTT: And that update rate you explain is based on -- or, excuse me, is intended "to compensate Claimants for the return they would have likely earned had they invested in a project similar to the Mamacocha Project without Peru's interference", right? **14:03**

MR DELLEPIANE: Ms Endicott you constantly read from my report. It would be so much easier and helpful if you would tell me where you're reading from, and then I don't have to go back and check if you're actually mischaracterising my testimony or not. If you just tell me I will read it and I'll agree with you the first time.

MS ENDICOTT: Why don't you go to paragraph 17 of your First Report?

MR DELLEPIANE: Thank you very much. Once again, it's not distrust; it's professional duty.

OK.

MS ENDICOTT: So you have explained that your update rate is based on or intended to compensate Claimants for the return that they would have likely earned had they invested in a project similar to the Mamacocha Project without Peru's interference, correct?

MR DELLEPIANE: That's the premise of the investment value calculation. That if the idea is well, what Peru did wrong here is simply that it

14:05

shouldn't have enticed or invited this investment, and to put in a sort of rescission or argument or reliance argument, OK, well, then return the funds and what kind of a return would be commensurate with the risk profile of the investment that Claimants went in. Well, they didn't go in to buy US Treasury bonds. They didn't go to buy Peru's sovereign debt. They went into a project in the renewable sector and the power sector in Peru.

So from an economic standpoint the only reasonable rate of compensation, the most reasonable rate of compensation would be one that actually is directly associated with the nature of the investment that was made. In this case we used our cost of equity, which, as you point out, is much lower than Versant's.

MS ENDICOTT: But you agree that there are no comparable companies exclusively dedicated to the generation of electricity and hydropower plants in Peru, or countries with similar rugged characteristics and risk profile, don't you?

MR DELLEPIANE: First of all, I'm not sure we said that but maybe that's an overstatement because there are some companies, but the most important thing is that you don't need to actually identify those companies. The whole idea of opportunity cost is what am I missing out, what is the price of what I'm missing out for not being able to do one thing. If I buy lunch in this place, what am I missing out from having lunch in the place across the street? I'm not having two lunches. That's the idea of opportunity cost. **14:06**

In this case the opportunity cost from an economic standpoint doesn't need to be associated with one particular investment opportunity or particular company. And why? Because that would be a consequential damage. That would not be opportunity cost. Opportunity cost is the economic price for what we're giving up. That's what we qualify it, the economic price for what's been given up.

MS ENDICOTT: What you're saying here in essence, Mr Dellepiane, is that Claimants should be awarded a return on that investment value as if they had invested in another project in Peru, right?

MR DELLEPIANE: No, that's not what I said.

What I said is that they should be awarded for the fact that they went into this particular investment expecting a certain minimum return, cost

14:07

of capital, cost of equity in this case, and then again as a minimum threshold it's not the expected return. The expected return is substantially higher. So by using the cost of equity we're recognising the floor that would entice this investment. The floor. Not the expected return.

MS ENDICOTT: So it's different than what you say at paragraph 17 of your First Report, which you just read, where you say it's intended to compensate Claimant for the return they would have likely earned had they invested in a project similar to the Mamacocha Project without Peru's interference?

That aside, the return that you're talking about here is the return they would have earned on that project, right?

MR DELLEPIANE: Correct.

MS ENDICOTT: And in order to earn that return they would have had to undertake the risks associated with that project, right?

MR DELLEPIANE: As in having committed capital between 2011 and 2022 now? That's exactly what risk taking is, to commit capital, develop an idea into a feasibility study, into further permits, auctions, lawyers, accountants, financial advisers and so on. That's exactly what risk taking is. That's what they did, and that's what we would be calculating here, is the remuneration associated with that.

We would not be, to be very clear, calculating a reward or return for the entirety of the project, for the full value of the project, just for the years that actually elapsed in which they weren't able to actually do anything, and their money has been parked in Peru.

MS ENDICOTT: So you're assuming that they would have earned the rate if they had been successful on another project essentially?

MR DELLEPIANE: No, I don't think you understood my explanation on opportunity cost. We don't need to assume that they would have; we need to understand what is the price for not having done so. That's a very different thing.

Again, today we're having trouble, you and I, with these hypothetical constructs that are necessary to actually price things in economics. This is not they would have done this or they would have invested in Hidroeléctrica or some other renewable projects. This is the price for them having not been able to.

MS ENDICOTT: Well, I'm not having any trouble, Mr Dellepiane, but I'm sorry that you are. **14:09**

Let's go back to some more just basic economic concepts. It was interesting because you were criticising in your presentation today the pre-money/post-money distinction, and at page 22 of the Transcript, line 8, at 8.27 this morning California time, you were saying that actually in one of their papers it's, as the literature says, for early stage companies that are comprised of little more than an entrepreneur with an idea. So that was your testimony about pre-money/post-money.

But if we look at Versant 25 we see that while it does state -- and I'll ask my colleague to put it up on the screen for everybody's benefit -- while it does state that it may be used for early stage companies that are comprised of an entrepreneur with an idea, it also applies to pre revenue companies, series A stage companies, companies that have not yet developed revenue but have potential, which is where the Mamacocha Project was as of March 14, 2017, right?

MR DELLEPIANE: I would absolutely object to the characterisation of the Mamacocha Project as comparable to a series A company. A series A company not only is pre revenue, it has no proof of concept for the most part. The Mamacocha Project has a PPA, a commitment for buying energy for 20 years that a financial institution would lien on to loan tens of millions of dollars. That is very different from a series A company. That is actually basically -- you know, let's see what it says here. **14:11**

Series A development, there's time to market, no validation, a very high risk and uncertainty. Value maybe $3 million.

We're looking at a renewable resource that is finite, that Peru needs at the time -- it says it needs, at least it needed it for a while until it didn't any more when prices went down. But we're looking at a finite renewable resource, with conducted feasibility studies, technical studies made, capital commitments almost at the door. You cannot compare that with a series A company. And the RER Contract itself is worth so much more certainty than any of this. Let's see what we're looking at here.

MS ENDICOTT: Are you finished?

MR DELLEPIANE: No, not at all a series A company.

MS ENDICOTT: And you went on to say

basically pre-money and post-money valuations are just used when you have two friends in a garage with an idea and one of them put $100,000 in, the other one still hasn't so the question is if I put another hundred thousand dollars in. **14:12**

But you are aware, aren't you, Mr Dellepiane, that the pre-money/post-money value is also used by venture capital firms to value companies, not just two friends in a garage, right?

MR DELLEPIANE: You said it yourself. This is not the land of venture capital; this is far from it. This is not even private equity. This is actually, you know, proven concepts. This is feasibility studies. This is natural resources --

MS ENDICOTT: That wasn't my question, Mr Dellepiane.

MR DELLEPIANE: Your question was whether --

MS ENDICOTT: Whether this method -- you agree that this method is also used by venture capital funds, not just two friends in a garage.

MR DELLEPIANE: I don't think -- I think my illustration was very clear about what it intended to do, and absolutely venture capitalists will consider this type of arrangement when they're looking at companies in their space, which is completely outside the realm of what we're valuing here. **14:13**

MS ENDICOTT: Now, in your hypothetical about the two friends in a garage, you say it's the idea that if one of them put in $100,000 and the other one still hasn't but he's thinking about it, wouldn't you agree that a project with only $100,000 in cash is worth less than the same project after the friend invests another $100,000 in cash?

MR DELLEPIANE: I'm so glad you asked this question, because maybe we can actually get to the bottom of it.

MS ENDICOTT: If you answer it.

MR DELLEPIANE: If the project is unknown, has no certainty in revenue, no certainty in costs, and is just an idea that somebody says let's, you know, create something new instead of pens which people can write with, but they have no idea how to implement it, where they're going to sell, how many they're going to sell, who's going to buy them, how they're going to have the preparatory know-how, et cetera, et cetera, et cetera, in your example a company that has basically nothing but an idea or maybe some advance idea but no proven revenue, a hundred thousand dollars may mean a lot and making that 200 may mean a lot more. **14:14**

But for a company of these characteristics, of the one we're looking at, that allows not just us but also Innergex and Glenfarne and Versant and a bunch of institutions to actually conduct a cash flow analysis, to actually equate that to the example I gave this morning, or to venture capital or to series A or B is completely misleading.

No. In a company like the one we're valuing, $100,000 or the injection of capital is not what determines and drives the value of that company, because there actually is a process of de-risking. It's taking an idea to a natural resource commitment or a PPA commitment in this case and then developing that. We're not valuing this on the basis of the cash flows that it can produce once it's in operation; we're valuing this appropriate risk to the stage of development at which it was in 2017.

MS ENDICOTT: So is it your opinion that a willing buyer would pay the same amount for a company without $17.8 million in cash that it would pay for a company with $17.8 million in cash?

MR DELLEPIANE: No, it would pay the same for a company that has to commit $17.8 million in cash to a company that has somebody who's ready to put the $17.8 million in cash, because, you see, it would value it on a cash flow basis and the cash flow recognises that $17.8 million as a reduction in value. **14:15**

So I have to change your hypothetical.

MS ENDICOTT: All right. So you can't answer my hypothetical, you want to change it, but I would just love it if you can answer my question which is whether or not it is your opinion that a willing buyer of a company would pay the same amount for that company without $17.8 million in cash that it would pay for the company that had $17.8 million in cash.

MR DELLEPIANE: First of all, you should appreciate, I'm the one warning you that I am changing your hypothetical to actually make it intelligible to a tribunal. In your example a company that has more money may be worth more, maybe not. What matters is what is it that it will receive in revenue and what is it that it needs to spend the money on. That's all that matters.

MS ENDICOTT: OK. So I think you were

14:17

saying that a company that has more cash on its balance sheet, all things being equal, is worth more?

MR DELLEPIANE: Not necessarily. A lot of companies are penalised for having cash -- sorry, we're getting into a discussion that is actually totally unhelpful to the Tribunal, but I'll answer your question. Companies that have a lot of cash are seen by financial analysts as being inefficient because they're not really investing that cash appropriately, or they're not paying dividends, or buying back shares.

So actually if you really must know, holding cash is typically seen as a bad thing for companies.

MS ENDICOTT: So I think if we've gotten to the point where you feel like your testimony isn't useful to the Tribunal, we can go ahead and end our cross-examination there, and I thank the Tribunal for its patience, and the court reporters as well. Thank you.

PRESIDENT: Thank you, Ms Endicott. I look to Mr Zeballos. Do you need time for preparing the redirect or can you immediately go, because you said you have a few questions left?

MR ZEBALLOS: I would like it if we could take a 15-minute break and then come back to the Tribunal with my redirect, which will be very brief. **14:18**

PRESIDENT: 15 minutes recess, until 19.35 CET.

(Short break from 2.18 EST to 2.38 EST)

PRESIDENT: Mr Zeballos, please proceed with the redirect.

MR ZEBALLOS: Mr President, before we get started, I was wondering if we could deal with one housekeeping issue?

PRESIDENT: Sure.

MR ZEBALLOS: I notice that the transcript has no record of my objection relating to PO3 and that concerns me a little bit -- PO3, my last objection, our last objection, and my only concern is I'd like to be sure that we don't have any issues with the transcript, or that that's something that can be corrected. I would imagine Ms Endicott also equally wants to make sure that the record is clear on this, so it would be nice if we could sort that out before we proceed.

PRESIDENT: I think that can be sorted out on the basis of the floor tape. Let's see.

MR ZEBALLOS: OK.

PRESIDENT: Then please proceed. **14:39**

MR ZEBALLOS: Thank you.

Re-examination by Claimants

by Mr Zeballos

MR ZEBALLOS: If we could please put up paragraph 16 on page 4 and 5 of Mr Jacobson's second witness statement?

MS ENDICOTT: I didn't ask any questions about Mr Jacobson's second witness statement.

MR ZEBALLOS: If you'll bear with me, I haven't asked any questions yet. I've just asked for the exhibit to be put up.

Mr Cardani, you, in response to a question about the Claimants' ability to self-fund the project, referred to Mr Jacobson's first witness statement. I'd ask you to just read Mr Jacobson's second witness statement at paragraph 16 and let me know if this refreshes your recollection as to your basis for that statement.

MR CARDANI: Yes, give me just a moment, please. [Pause]

Yes, it does.

MR ZEBALLOS: And this -- can you tell me what this paragraph --

MS ENDICOTT: Pardon me, in terms of

14:40

getting objections on the record, are the rules of redirect such that counsel can pull up an exhibit or document that wasn't referenced at all during cross-examination, show the witnesses exactly the paragraphs he wants him to read, and then proceed to ask a bunch of questions?

PRESIDENT: The second point is well taken. The other points depend on what was asked in cross-examination.

Mr Zeballos, please may I invite you not to be unreasonably leading?

MR ZEBALLOS: Sure. Mr President, I don't even need to ask any questions on this. I just wanted the record to be clear.

PRESIDENT: But that's not the purpose of redirect. For the record to be clear, you can do that in due argument.

MR ZEBALLOS: Very well.

Mr Dellepiane, if we could turn to paragraph 145 of your Second Report. Tom, if you could put that on the screen, I'd appreciate it.

Now, Mr Dellepiane, could you take a minute to read the entire -- let me start over again, given the last objection.

You were asked repeatedly -- not

repeatedly questions pertaining to the last sentence in this paragraph, which states, "Given that the only relevant but-for scenario is the one in which the Mamacocha Project is developed, any analysis attempting to utilise the Innergex offer as a comparison to the DCF analysis must assume that the Innergex offer would have been executed". 14:42

I would invite you to review the first sentence of this paragraph and any commentary that you would care to give on the compatibility of these two sentences in this paragraph -- sorry, the first -- yes, correct.

MR DELLEPIANE: Thank you. Well, I thought I was clear about this, but perhaps it's more clear in writing than I was verbally.

The analysis does not need to assume or presume the execution of a deal with Innergex because we're determining damages to the equity holdings of Claimants as of March 14, 2017, and the fact that there is a proposed transaction, if anything, should provide valuable information and more confirmation of value, and not more doubt and more opportunity to actually distort the value that existed at that time.

The fact that we are set out not to do a contract claim or a commercial dispute but a fair market valuation in a treaty case in which the right is for 100 percent of the equity holding, and that's the task that both Versant and I are tasked with, to determine the fair market value of 100 percent of the shares into the Mamacocha Project, that means that we conduct the analysis that we do and that, faced with an Innergex offer, we don't care if it was executed or not because we're actually trying to determine what was the value of the underlying asset. We don't care if the buyer wanted to buy, if the seller wanted to sell; those things are not relevant to a fair market value determination. **14:43**

I hope that clarifies things, but perhaps the writing is clearer than my words.

MR ZEBALLOS: And, Mr Dellepiane, who was the 100 percent equity shareholder of the Mamacocha Project on the valuation date?

MR DELLEPIANE: Latam Hydro.

MR ZEBALLOS: I have no further questions.

PRESIDENT: Thank you, Mr Zeballos. I look to my colleagues.

Professor Tawil, any further questions?

PROFESSOR TAWIL: No, Mr Chairman, I have no questions. Thanks.

PRESIDENT: Professor Vinuesa? **14:44**

PROFESSOR VINUESA: No, thank you, I have no questions.

PRESIDENT: I have no questions either.

Thank you, Mr Cardani and Mr Dellepiane, for testifying. You are now excused as an expert witness.

MR DELLEPIANE: Thank you, Mr President, Professor Tawil and Professor Vinuesa.

PRESIDENT: I look to Mr Zeballos. You are still the porte parole for the Claimants today?

MR ZEBALLOS: Yes, I am.

PRESIDENT: I see Mr Grané also. Is there any point of procedure, household, or admin you would like to raise at this point?

MR ZEBALLOS: Other than the issue I raised on the transcripts, no, Mr President.

PRESIDENT: Mr Grané?

MR GRANÉ: Nothing, Mr President, other than to thank you and the members of the Tribunal for the questions that we have received, which we will of course address in our closing statements. So thank you for that. Very helpful.

PRESIDENT: All right. So it was not too early for you, Mr Grané? That was our concern.

MR GRANÉ: Not -- no, Mr President. They were quite helpful. Thank you. **14:45**

PRESIDENT: Then you can all address them hopefully in your closing statements on Friday.

Have you made any progress on the post-hearing briefs?

MR GRANÉ: We have not yet consulted amongst the parties, Mr President. I think that, to be honest, Mr President, we were waiting to see the questions. I think the questions and the extent to which we can address those questions in closing will be important in determining whether we believe that post-hearing submissions would be necessary or helpful.

I think that in the light of the questions it may not be necessary to have post-hearing submissions, but it's something that we still need to discuss with the opposing side.

PRESIDENT: If I may make a suggestion, what would be helpful is, on the basis of the index of your written submissions, alegatos, that you could make an index of the most important points of the transcript that you believe support those points in the table of contents. If you simply use the table of contents, because you have pretty elaborate tables of contents, both sides, then you can index the transcript there but use the most important points -- not everything -- but what really supports your case. **14:47**

MR GRANÉ: That is an excellent suggestion, Mr President. May I ask, is that something perhaps that could be submitted within a reasonable period of time after the hearing in lieu of the post-hearing submissions?

PRESIDENT: Exactly. That was the suggestion I have. And you may, for example, embellish it with ten pages or simply say well, look, have you seen this, or this has not escaped your attention undoubtedly. So this type of ten-pager, you would like to add.

MR GRANÉ: That's an excellent idea, Mr President. I would be happy to take that on. Thank you.

PRESIDENT: Mr Zeballos, maybe you can also reflect on this?

MR ZEBALLOS: Yes, Mr President. We are happy to engage in that exercise. As to the issue of briefing, we're still consulting internally on that.

PRESIDENT: Sure, I understand that. This may be unusual but in my prior experience it's practical to have such an index on the transcript, both sides find it important, so that at least we don't miss anything that you find important. **14:48**

On that note I look to my colleagues. Anything further?

PROFESSOR VINUESA: Not from my side.

PROFESSOR TAWIL: No.

PRESIDENT: Thank you. Then I will see you all tomorrow.

(The hearing was adjourned at 2.48 EST)